THE CONVEYANCER
AND
PROPERTY LAWYER

VOL. 18, No. 5 SEPTEMBER—OCTOBER, 1954

ANDREW HENRY WITHERS

The death on September 3 of Andrew Henry Withers in his eightieth year deprives the legal profession of its most distinguished conveyancer, Lincoln's Inn of a popular and much loved member and this Journal of a most valued contributor and loyal supporter. Mr. Withers, after winning the Barstow Scholarship in 1897 and honours in law in London University, was called to the Bar in 1898 and became a pupil of Sir Philip Gregory. From the beginning he applied himself to a thorough study of those branches of the law to which he intended to devote his professional life. That study he continued with undiminished zest until his death. It was typical of the man that shortly after he was called he determined to master the law of estate duty and read Hanson's *Death Duties* from cover to cover and, until his death, he studied each year's Finance Act with meticulous care. His constant study combined with a naturally first-class brain made him a fine lawyer and he rapidly acquired a large practice which he retained almost undiminished up to his death. The first half of Mr. Withers's legal career was passed in the practice of the old conveyancing and in this period he devoted much time to the law relating to reversions. The result of his great experience in this field was the publication of his principal work, Withers *On Reversions*, which immediately became, and has remained, the leading textbook on the subject. The second half of his career was passed in the practice of the new conveyancing, the principles of which he mastered with ease. Gifted with a most remarkable memory Mr. Withers never forgot the old conveyancing in the practice of the new and, as the years passed, his opinion on all conveyancing questions acquired great authoritative force.

That Mr. Withers was not more generally known may be attributed to the fact that he had a shy disposition, which prevented his undertaking court work, and he was, in essence, a most unambitious man. He never became a Bencher of Lincoln's Inn or a member of the Institute, that goal of all conveyancers, though it is generally known that he could have become a Bencher or a member of the Institute had he so wished. He never sought recognition for himself but was content to do his work well and to place his wide knowledge and experience at the disposal of his fellow practitioners young and old in Lincoln's Inn, many of whom habitually laid their tougher conveyancing and chancery problems before him, and he never refused to show them what he considered was the best method of solving them. Though Mr. Withers was both a learned and an intellectual man having, apart from his profound interest in his religion—he was a good Roman Catholic—and his great affection for his family, few interests outside the law, he was not an austere man. He had great charm and a lively and sometimes caustic sense of humour which prevented his learning ever having even a tinge of the dry-as-dust about it. Members of Lincoln's Inn found him the ideal dinner companion in hall, where he frequently dined in term time.

The death of Mr. Withers will be a real loss to this Journal. He contributed to the first number of the New Series of the Journal a form of voluntary settlement which is still in constant request and he continued until his death each year to contribute forms of outstanding interest, sometimes under his own name and sometimes anonymously. He never did a shoddy piece of work and his forms were always the result of much thought and frequently showed the best way of dealing with a new problem. It was a sign of his unflagging interest in the law that in the last years of his life he was devoting increasing thought to the problem of death duties and income tax and the modification of the old form of classical settlement with a view to curtailing liability to tax. His form of voluntary settlement in favour of the children, present and future, of a living person (see Vol. 13, p. 565) has provided the basis on which many practitioners have built. Mr. Withers always regarded this Journal as the learned periodical of the conveyancing world and he chose it to publish his last major contribution to the Law—his article on " Sales of Lands of Mixed Charities " (Vol. 10, p. 72) which was subsequently republished as a pamphlet. He will be much missed by fellow members of the Bar and by all who had the privilege of being accepted by him as a friend.

B. B.

CONVEYANCER'S NOTEBOOK

Stamp Duty—Release of Restrictive Covenant

A correspondent writes to say that he drafted a deed whereby, in consideration of the payment of £10, the person entitled to the benefit of a restrictive covenant released the person subject to it from the covenant; there was a certificate of value. In Prideaux's *Precedents in Conveyanicng*, 24th ed., Vol. 3, p. 968, there is a note implying that such a deed falls under the head "Release or Renunciation of any property, or of any right or interest in any property, upon a sale" and attracts *ad valorem* duty. On submitting the deed for adjudication, the Controller of Stamps took the view that a deed stamp of 10s. was attracted and that the deed did not fall under the above-mentioned head, citing *Great Northern Ry.* v. *C. I. R.* [1899] 2 Q.B. 653, affirmed [1901] 1 K.B. 416. (It may be mentioned, in passing, that, although in this case, a heavier duty was payable than would have been had the case fallen under the head in question, if the consideration had been substantial the advantage would have lain with the taxpayer.)

We agree with the Revenue. It is not easy to give reasons. The head "Release or Renunciation of any property, etc." most aptly covers the case where there is an agreement for sale which can most suitably be given effect to by a release, as where a life tenant agrees to sell his interest to the remainderman. The release of a restrictive covenant cannot properly be described as the most suitable way of effecting the sale of the benefit of the covenant; one would hardly treat the release of a debt as a conveyance on sale. In the *Great Northern Ry.* case it was held that an instrument acknowledging the receipt of money paid as compensation for the loss of the right to work coal was not a conveyance on sale. It is clear from the report of the case in the court below that the head "Release or Renunciation of any property, etc." was considered. What impressed Collins L.J. in the Court of Appeal ([1901] 1 K.B. 427) was that no property, or estate or interest in any property, was transferred to, or vested in, a purchaser, as required by the Stamp Act, 1891, s. 54. The same reasoning would appear to apply to the release of a restrictive covenant.

Stamp Duty—Certificate of Value

The following statement of current Stamp Office practice appears in the Law Society's *Gazette* of September, 1954, at p. 369 :

" Where a purchaser buys several lots of property from the same vendor at an auction sale, the question whether the resulting transactions can be said to constitute a series must depend upon the circumstances at the time when the bids are made and accepted. If, in fact, each lot is bid for and bought separately, then the subsequent preparation for convenience only of one memorandum of the contracts is not regarded by the Stamp Office as constituting grounds for objection to the inclusion of a certificate of value, where appropriate, if separate conveyances are taken.

" On the other hand, if there were circumstances which would show that the lots were not bid for and bought separately, *e.g.*, if the bids of the purchaser were dependent upon his obtaining a good title to every lot, the preparation of *separate* memoranda would not prevent the transactions together from constituting a series. Again, if a purchaser takes separate conveyances of properties included in one lot, he cannot plead that these conveyances do not form part of a larger transaction or series of transactions.

" A sale by private treaty is, however, on quite a different footing (see, for example, the remarks of Lawrence J. in the case of *Att.-Gen.* v. *Cohen* [1936] 2 K.B. 246; [1937] 1 K.B. 478). Where there are several conveyances negotiated between two parties privately at or about the same time, then whether the properties are included in a single contract, or whether there are several contracts, there would be the strongest presumption that the several conveyances must each form part of a larger or of a series of transactions; and if in any case the parties contended that there were in fact separate transactions that case would have to be considered most carefully on its merits."

THE LANDLORD AND TENANT ACT, 1954

By Ashley Bramall, Barrister-at-Law

The new Landlord and Tenant Act has its origins in the Report of the Jenkins Committee and the White Paper on "Government Policy on Leasehold Property in England and Wales." The only significant omission from the Act is the code of standard covenants for leases recommended by the Committee and accepted in the White Paper. Part I of the Act replaces with permanent provisions the temporary control over long residential tenancies at low rents established by the Leasehold Property (Temporary Provisions) Act, 1951. Part II replaces the provisions of the Landlord and Tenant Act, 1927, and Part II of the 1951 Act, with regard to new tenancies of business premises. Part III amends, without repealing, the provisions of the 1927 Act on compensation for improvement of business premises. Part IV extends the operation of the Leasehold Property (Repairs) Act, 1938, and section 84 of the Law of Property Act, 1925, and amends section 19 of the 1927 Act, besides introducing an important new provision for the termination of tenancies of derelict land. The Act came into operation on October 1, 1954.

Residential Tenancies

The situation with which Part I of the Act is intended to deal is that of occupants of houses within the rateable value limits of the Rent Acts, who are debarred from the protection of the Acts because the tenancies under which they hold are at rents of less than two-thirds the rateable value. Temporary protection was given by the Leasehold Property (Temporary Provisions) Act, 1951. This took the very simple form of extending, initially until June 24, 1953, and then, by the Leasehold Property Act and Long Leases (Scotland) Act Extension Act, 1953, until December 24, 1954, all leases expiring either before or during the period of operation of the Act, where the tenant or a member of his family was residing in a dwelling-house comprised in the property.

It was clear that the problem could not be permanently solved by indefinitely allowing tenants to enjoy security of tenure at a ground rent. The Act of 1954 attempts to provide a more permanent solution. It provides the opportunity for the parties to establish a "statutory tenancy" at a "reasonable rent" either

by agreement or by going to the county court. If the landlord does not wish to have a statutory tenancy established the old tenancy will continue unless the landlord can show one of the prescribed grounds for obtaining possession; if the tenant does not desire a statutory tenancy he will have to quit the premises.

Agreements to contract out of Part I of the Act are forbidden by section 17.

Tenancies to which the Act applies

Part I of the Act applies to houses let on tenancies, originally granted for more than twenty-one years (whether or not they have been extended by the grant of a new lease to the former tenant at the expiry of the old tenancy (section 19), by holding over and payment of rent, or by any enactment, such as the Act of 1951 (section 2 (4))), which would be subject to the Rent Acts if the rent were not less than two-thirds the rateable value. The subject-matter of the tenancy must therefore have a rateable value not exceeding £100 in London or £75 in the provinces, be let as a separate dwelling-house and be occupied residentially by the tenant. Thus the Act will not extend to all houses protected by the Act of 1951, since that Act applied to all long tenancies where the tenant or a member of his family was residing in a dwelling-house comprised in the property. This included tenancies of property with a rateable value above the Rent Act limits, business and other properties where the dwelling-house would be excluded from the Rent Acts as being let together with other land or premises, properties not let as a dwelling-house although in fact lived in, and those occupied by a member of the tenant's family but not by the tenant.

The whole subject-matter of the tenancy may not be protected and there is provision for determining, by agreement or by a decision of the county court, those parts of the property which qualify for protection (section 3 (4)). The parts which qualify are those of which the tenant would be entitled to retain possession under the Rent Acts if these applied. These are not necessarily only the residential part of the premises. If part of the premises is used for business purposes the whole of the premises will still be protected provided it is "let as a dwelling-house" (*Vickery* v. *Martin* [1944] K.B. 679), or the parts used for business purposes are "let together with" the dwelling-house rather than the dwelling-house being let with them (Act of 1920, s. 12 (2) (ii) (iii) and Act of 1939, s. 3 (3)). On the other hand the tenant will not be able to retain possession of part of a house which he has sublet for business purposes (*Gidden* v. *Mills* [1925] 2 K.B. 713),

of both of two self-contained flats or houses let under the same lease (*Murgatroyd* v. *Tresarden* [1947] K.B. 316) or, possibly, under some circumstances, of part of a house sublet for residential purposes (*Crowhurst* v. *Maidment* [1953] 1 Q.B. 23, doubted in *Berkeley* v. *Papadoyanis* [1954] 2 All E.R. 409).

Within the last year of the tenancy, if the tenancy does not at that time qualify for protection, an application may be made to the county court for a declaration that it is not to be treated as one to which the Act applies. This declaration is only to be made if the court is satisfied that the tenancy is not likely to qualify immediately before the date on which it is due to terminate by effluxion of time or the earliest date on which it can be terminated by notice. Once the declaration is made the tenancy will not at any time be protected by the Act.

Continuation and Termination of Tenancies

Any tenancy which qualifies for protection immediately before the date on which it should come to an end by effluxion of time, or immediately before the earliest date when the landlord could bring it to an end by notice to quit (Fourth Schedule), is continued by section 3 (1) and is not to be brought to an end except by a month's notice given by the tenant (section 5) or by a notice of not less than six months and not more than a year given by the landlord (section 4 (2)).

The landlord's notice may take one of two forms. It may be a "notice proposing a statutory tenancy" or a "notice to resume possession." The former must contain the landlord's proposals for the terms of the future statutory tenancy (section 4 (3) (*a*)) and in particular the premises which are to be protected, the rent and the periods at which it is to be paid, the initial repairs to be carried out, and by whom, and the manner in which they are to be paid for (section 7 (2)). A "notice to resume possession" must inform the tenant that if he is not willing to give up the premises at the conclusion of the tenancy the landlord will apply to the county court for possession and must state the grounds on which he intends to apply (section 4 (3) (b)). Both types of notice must invite the tenant to state within two months whether he is willing to give up possession.

The landlord who can serve these notices is not necessarily the immediate reversioner. For this purpose the term "landlord" is defined as the owner of the interest which is an interest in reversion expectant on the termination of the relevant tenancy, is either the fee simple or a tenancy with at least five years longer to

run than the tenancy in question, and is not in reversion expectant on any other tenancy which fulfils these conditions (section 21 (1)). In other words the " landlord " is the owner of the interest nearest in reversion to the tenancy itself, which has at least five years longer to run. The Fifth Schedule contains provisions for safeguarding the interests of other landlords who may be affected.

Establishment of a Statutory Tenancy

When a landlord has served a notice proposing a statutory tenancy it is necessary to consider, two months after service, whether the tenant has notified the landlord that he intends to retain possession and whether the tenancy would be protected by the Rent Acts if it were not at a low rent. If neither of these conditions is fulfilled the landlord's notice terminates the tenancy, and the Rent Acts will not apply. If either or both are fulfilled the Rent Acts will apply if the long tenancy is one to which this Act applies when it comes to an end. The application of the Rent Acts is that of " new control " under the Act of 1939, subject to four modifications: (1) the disqualification of " landlords by purchase " from obtaining possession for their own occupation or that of members of their families is limited to those purchasing after November 21, 1950 (section 6 (4) (a)); (2) the basic date for standard rent and other purposes is the date on which the former tenancy came to an end (section 6 (4) (b)); (3) the " repairs increase " provisions of the Housing Repairs and Rents Act, 1954, do not apply (section 6 (5)); (4) Rent Tribunals have no power to modify the standard rent (section 7 (1)).

Determination of Terms of Statutory Tenancy

The terms of the statutory tenancy are to be determined either by agreement in writing or by the county court. Agreement must have been reached or an application made to the court two months before the landlord's notice is due to expire, otherwise the notice becomes ineffective and the long tenancy continues (section 7 (2)). Application to the court must be made by the landlord after he has served his notice, but not less than two months afterwards, unless the tenant has already elected to retain possession when it may be made after one month (section 7 (5)).

The matters on which agreement must be reached or a determination made by the court are :—

(1) the premises which are to be protected;

(2) the amount and frequency of payment of the rent and whether it is to be paid in advance or arrear;

(3) what initial repairs are to be done;

(4) by whom the initial repairs are to be carried out;

(5) how the initial repairs are to be paid for and what are to be the repairing obligations of the statutory tenancy (section 7 (2)).

The court is not to be asked to determine any matter which has already been agreed between the parties (section 7 (5)) except that the court may apparently determine that the premises qualifying for protection (section 6 (3)) are different from those in respect of which the landlord has given his notice. If this happens, the landlord's notice is not invalidated, but he is not bound by the proposals contained in it, even if they have been accepted by the tenant (section 7 (4)).

The rent fixed as the standard rent is, when determined by the court, to be the reasonable rent for the house let in the state of repair in which it will be after any initial repairs have been carried out and on the terms which are agreed or determined as the terms of the tenancy, without any regard for the personal circumstances of the parties (section 9 (5)).

Initial Repairs

One of the principal difficulties in converting a long tenancy into a statutory tenancy is that considerable dilapidations are likely to have arisen which the tenant will be financially unable to repair.

Among the matters to be agreed or determined by the court before the commencement of a statutory tenancy is what initial repairs are to be carried out by the landlord or the tenant (section 7 (2)). The amount of these is to be limited, when determined by the court, to what is necessary to bring the house into good repair. The landlord is not to be required to carry out more work than he has offered to carry out in his application to the court and the tenant is not to be required to carry out any initial repairs without his consent (section 9 (1) (3)). "Good repair" is defined, as "good repair as respects both structure and decoration having regard to the age, character and locality of the dwelling-house" (section 9 (2)).

The landlord is entitled to be paid by the tenant for any part of the cost of the initial repairs carried out by him necessitated by the tenant's failure to fulfil the repairing obligations under the long tenancy and for the reasonable cost of determining those repairs, except for any part of the cost in either case which is recoverable from any one other than the tenant. The agreement between the parties or the determination of the court may provide for payment either in a lump sum or in instalments.

The First Schedule contains detailed provisions for the manner in which payment is to be made. If the statutory tenancy comes to an end before the whole cost has been paid the amount outstanding is to become payable, unless any part of the repairs which has not been carried out has become unnecessary owing to the prospective demolition or structural alteration of the premises. A tenant may apply for a variation of the manner of making the payment, although not of its amount, if the actual cost substantially exceeds the estimated cost or if he was not the tenant at the time the terms were agreed or determined and his personal circumstances differ from those of that tenant. By the Second Schedule a tenant can obtain a reduction of his rent if the landlord fails to carry out the initial repairs in a reasonable time and failure of a tenant to do repairs which he is required to carry out is to be treated as a breach of covenant entitling the landlord to obtain an order for possession.

When the statutory tenancy has begun, the liability of the tenant and his predecessors under the terms of the long tenancy is extinguished, except in relation to non-payment of rent, rates and insurance, and illegal or immoral user, and no order for possession is to be made on the grounds of breach of covenant or nuisance and annoyance on account of anything done before the end of that tenancy (section 10).

The statutory tenancy created in accordance with this Act only lasts as long as the tenant himself, or his successor under section 12 (1) (g) of the Rent Act of 1920, retains possession. At the end of that time the Rent Acts apply as though the premises had never previously been let, so that any rent can be charged, subject to the tenant's right to refer the contract to a Rent Tribunal; but this is not to affect any subtenant to whom part of the premises had been sublet during the statutory tenancy created by the Act (section 11).

Landlord's Claim for Possession

If the landlord's notice has taken the form of a notice to resume possession, and by the end of two months after service of the notice the tenant has elected to retain possession or the qualifying conditions for protection are fulfilled, the landlord may apply to the court for an order for possession. The application must be made not later than two months after the tenant has notified his election to retain possession, or, if he has not done so, not later than four months after service of the landlord's notice (section 13 (1)).

The grounds on which the landlord may apply for possession

fall under two heads (section 12 (1)). In the first place he may apply on the ground that he requires, for the purposes of redevelopment, to demolish or reconstruct the whole, or substantially the whole, of the premises of which the tenant would be entitled to retain possession. Secondly, he may apply on any of the grounds set out in the Third Schedule. These reproduce in part the grounds contained in section 3 and the First Schedule of the Rent Act of 1933, but the paragraph dealing with breaches of covenant is confined to non-payment of rent, rates and insurance; the "nuisance and annoyance" paragraph omits any reference to deterioration of the premises and the date before which a landlord may not have purchased the premises, if he is to be able to claim possession for the occupation of himself or a member of his family, is November 21, 1950. There are no provisions dealing with a tenant's notice to quit or possession for an employee.

An order for possession is only to be made on one of the grounds in the Third Schedule if the judge is satisfied that it is reasonable to make the order (section 13 (4)). If the application is made on the ground that the premises are required for redevelopment the judge must grant possession at the termination of the tenancy if he is satisfied that the landlord has made reasonable preparations to proceed with the redevelopment (section 13 (2)). If not so satisfied, he may make an order for possession on a postponed date not more than one year later than the date of termination specified in the notice. If the latter order is made the tenancy continues on the same terms and conditions as before until the postponed date (section 13 (3)).

If the landlord makes no application for possession within the prescribed period his notice becomes ineffective and the tenancy continues as before. If he makes an application, but no order is made, the notice also becomes ineffective, but within one month of the final disposal of the application he may serve a notice proposing a statutory tenancy. This notice may have a termination date not less than three months from the date of service (section 14 (3)).

Subtenants

A subtenant who is protected under the Rent Acts against his own landlord is not protected by section 15 (3) of the Act of 1920, against the head landlord on the determination of the mesne tenancy, if his landlord is not the tenant "of a dwelling-house to which the Act applies." Prior to the present Act this excluded subtenants from protection where the superior tenancy was at a rent of less than two-thirds the rateable value (*Knightsbridge*

Estates Trust, Ltd. v. *Deeley* [1950] 2 K.B. 228). This is now reversed by section 15 (1) of the present Act, which provides that a superior tenancy at such a rent is not to be disregarded for the purposes of the Rent Acts on that ground alone. A subtenant will, therefore, now be protected unless the subtenancy was created after the commencement of the Act out of a long tenancy governed by the Act and either the long tenancy was being continued by section 3 (1) after the normal expiry date, or notice to terminate it had been given by the landlord. These exceptions are not to apply, however, if the tenancy was granted with the consent in writing of the landlord.

Enforcement of Covenants during Long Tenancy

Section 16 contains provisions limiting the immediate landlord's right to enforce covenants during the currency of tenancies to which the Act applies. During the last seven months of a tenancy the court cannot make any order for possession in forfeiture proceedings or award damages for breach of covenant (section 16 (3)). If proceedings are brought and an order made when there are more than seven months to run a tenant can, within fourteen days of the making of the order, serve notice on his immediate landlord invoking the provisions of the section. If he does so the order becomes inoperative, except in so far as it deals with costs, but the tenancy is to be treated as if it were granted for a period expiring seven months after making the order (section 16 (2)). This means that the tenant will only be entitled to the protection of the Act if, at the end of the seven months, the tenancy has already lasted more than twenty-one years and, even in that event, the landlord will have time to serve a notice to take effect at the end of the seven months. The landlord will not, however, be able to rely on the breach of covenant as a ground for obtaining possession since the only breaches which provide a ground under the Third Schedule are failures to pay rent, rates, and insurance, and the provisions of section 16 do not apply at all to this type of covenant, nor to immoral or illegal user (section 16 (4)). Section 16 does not prevent the award of damages for breach of covenant after the tenancy has come to an end, in cases where the tenant does not retain possession under the Act (proviso to section 16 (3)).

Business Premises

Part II of the Act deals with business premises and replaces those parts of the Act of 1927 dealing with compensation for goodwill and the grant of new tenancies. It applies "to any tenancy

where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes" (section 23 (1)). "Business" is very widely defined to include "a trade, profession or employment and includes any activity carried on by a body of persons, whether corporate or unincorporate" (section 23 (2)). The Act of 1927 excluded premises used for any profession and those used for the business of subletting as residential flats. The present Act does not apply where the business is carried on in breach of a prohibition of use for business purposes generally, or of any one or more of the various classes included by section 23 (2) in the definition of business, presumably "trade, profession or employment" or "activity carried on by a body of persons whether corporate or unincorporate." The exclusion does not extend, however, to a prohibition of any specified business, or of any but a specified business (section 23 (4)). A business is probably "carried on by" the tenant if he is in partnership in the business (see *Clift* v. *Taylor* [1948] 2 K.B. 394), but probably not if it is the business of a limited company, although the position may be different if the tenant is the beneficial owner of substantially all the shares (*Pegler* v. *Craven* [1952] 2 Q.B. 69).

Like the Act of 1927 this Act excludes from its scope tenancies of agricultural holdings and those created by mining leases. It also excludes tenancies granted by reason of the holding of any office appointment or employment, provided, in the case of those granted after the Act, they are in writing and express the purpose for which they are granted. There are also excluded tenancies of licensed premises, other than hotels for bona fide travellers or premises with auxiliary licences, tenancies for terms not exceeding three months, unless they are renewable or the tenant and his predecessors in business have been in occupation for more than six months, and certain tenancies under the Rent Acts (section 43). The last exclusion applies where the property is let so that the landlord's right to possession is fettered by the provisions of the Rent Act of 1933, or would be fettered if the rent were not less than two-thirds of the rateable value. This means that all houses within the rateable value limits of the Acts and let as separate dwellings will be excluded from this Act if they are residentially occupied by the tenant but not otherwise. A large number of tenants of mixed residential and business premises will thus be excluded from protection under this Part of this Act.

The arrangements introduced by Part II for business premises

resemble those for residential premises under Part I in that they prevent a tenancy from coming to an end except by service of a notice and then provide for arrangements to be made for a more permanent solution. The difference is that under Part I the initiative in proposing the statutory tenancy rests with the landlord, while under Part II the initiative in asking for a new tenancy rests with the tenant.

Continuation and Termination of Tenancies

A tenancy to which Part II of the Act applies is not to come to an end by effluxion of time (section 24 (1)), although it may be ended by surrender, forfeiture or notice to quit given by the tenant. The steps necessary to bring the tenancy to an end either at its normal date or after it has been continued by the Act may take one of four forms :

(1) The landlord may give not more than twelve nor less than six months' notice to terminate the tenancy (section 25 (1) (2)). If it could have been terminated by a landlord's notice by the terms of the tenancy, the notice must not expire before the earliest date on which it could have been brought to an end by the landlord and, if more than six months' notice would have been required, the longest period of notice which can be given is six months longer than that required by the tenancy (section 25 (3)). The notice must require the tenant to state within two months whether he is prepared to give up possession (section 25 (5)) and must state whether the landlord would oppose an application for a new tenancy and, if so, on what grounds (section 25 (6)). The definition of landlord is the same as in Part I with the substitution of fourteen months for five years (section 44) (*ante*, p. 439).

(2) If the tenant has a tenancy for a term of years exceeding one year, whether or not continued by the Act, or a term of years and then from year to year, and the landlord has not given notice to terminate the tenancy, he may give the landlord a request for a new tenancy (section 26 (1)). This must propose the termination of the old tenancy and the substitution of a new one at a date not more than twelve nor less than six months from the date of the request, nor earlier than the date of expiry of the tenancy or the earliest date on which it could be brought to an end by the tenant (section 26 (2)). It must also contain the tenant's proposals for the property to be comprised in the new tenancy, for the rent and the other terms of the tenancy (section 26 (3)). The landlord must within two months give the tenant notice if he intends to oppose an application for a new tenancy, stating the grounds (section 26 (6)).

(3) The tenant may give notice not later than three months before the normal date of expiry that he does not want the tenancy to be continued (section 27 (1)), or he may give three months' notice to bring the tenancy to an end at any time after the normal date of expiry (section 27 (2)).

(4) The landlord and tenant may agree on a new tenancy to start at a future date. In that event the former tenancy continues until that date, but otherwise the Act does not apply to it (section 28).

Application for a New Tenancy

An application for a new tenancy may be made to the court when steps have been taken to end the tenancy under either (1) or (2) above (section 24 (1)). When the landlord has served a notice the tenant may only apply for a new tenancy if he has replied within two months that he is not willing to give up possession (section 24 (2)). An application must be made not less than two nor more than four months after the giving of the landlord's notice or the making of the tenant's request (section 24 (3)). Jurisdiction to hear applications is conferred on the county court for holdings with a rateable value not exceeding £500 and the High Court for other holdings, subject to the right to transfer the proceedings to another court by agreement (section 65 (2) (3)). "Holding" is defined by section 23 (3) as any property comprised in a tenancy excluding any part not occupied by the tenant or by anyone employed by him for the purpose of the business which is the subject of the protection of the Act.

Determination of Applications

The basis for granting new tenancies is completely changed from that of the 1927 Act and there is no longer any need for the tenant to prove adherent goodwill. Provided he fulfils the necessary qualifications for protection and has followed the correct procedure he is entitled to a new tenancy unless the landlord can successfully establish one of the grounds for opposition.

There are seven of these grounds (section 30):—

(a) Bad state of repair resulting from the tenant's failure to carry out his repairing obligations.

(b) The tenant's persistent delay in paying rent.

(c) Substantial breaches of the tenant's obligations or other reasons connected with his use or management of the holding.

(d) Suitable alternative accommodation.

(e) Where the holding is a sublet part of a larger property

comprised in a superior tenancy, the intention of a superior landlord to let the larger property as a whole at a substantially higher rent than that obtainable for the parts separately.

(f) The landlord's intention to demolish or reconstruct the premises or do substantial work of reconstruction.

(g) The landlord's intention to occupy the premises wholly or in part for a business to be carried on by him or as his residence. This last ground does not apply if the landlord's interest was purchased or created within the five years preceding the termination of the current tenancy and at all times the tenancy has been one of premises occupied by the tenant for the purpose of a business carried on by him.

If the landlord successfully opposes the application the court is to make no order (section 31 (1)). If the landlord's opposition is on one of grounds (d), (e) or (f), the court may make a declaration that, although not satisfied with the landlord's case, it would be satisfied if the date of termination of the current tenancy were later by not more than a year than the date specified in the landlord's notice or tenant's request. No order is to be made, but if the tenant so requires the court may amend the notice or request to substitute the later date (section 31 (2)). This has the effect of a rejection of the tenant's application on one of the grounds specified and means that the tenant will obtain either the alternative accommodation or compensation.

Compensation

Where an application is rejected on one of the grounds (e), (f) or (g), either immediately or with reference to some future date, and not on any other ground, the tenant is entitled to compensation (section 37 (1)). If for fourteen years before the date of termination the holding, or the business premises comprised in it, has been continuously occupied for the purpose of a business carried on by the occupier or his predecessor for the time being the compensation is to be twice the rateable value and in other cases it is to be the rateable value (section 37 (2) (3)). A tenant under a tenancy current at the commencement of the Act is not to receive compensation unless the premises have been occupied by someone carrying on his business for five years (Ninth Schedule).

Subject-matter and Terms of New Tenancy

The subject-matter of the new tenancy will normally be the "holding," that is to say, it will exclude any premises not occupied by the tenant or his employee for the purposes of his business

(section 32 (1)). The landlord may, however, require that the new tenancy shall be one of the whole of the property let under the former tenancy (section 32 (2)). The tenancy is to be for any period agreed or for such period not exceeding fourteen years as the court considers reasonable (section 33). The rent and other terms are to be agreed or determined in the same way (sections 34 and 35). The rent to be determined by the court is what might reasonably be expected to be obtained in the open market by a willing lessor, disregarding :—(a) the effect of occupation by the tenant and his predecessors; (b) goodwill established by the tenant and his predecessors; (c) improvements carried out by the tenant and his predecessors other than under contractual obligations; (d) the effect of a liquor licence the benefit of which belongs to the tenant (section 34).

The landlord and the tenant are required to execute the necessary documents to give effect to the court's determination (section 36 (1)), unless the tenant applies within fourteen days for the revocation of the order (section 36 (2)).

Contracting out

Any agreement seeking to preclude the tenant from making an application is made void by section 38 (1) and agreements are also avoided by section 38 (2) which seek to exclude or avoid compensation in the case of premises which have been occupied continuously for five years by occupiers carrying on the same business. In other cases compensation may be excluded or modified (section 38 (3)) and in any case agreements may be made on the amount of compensation after the right to it has accrued (section 38 (2)).

Proceedings under the 1927 and 1951 Acts

Proceedings for a new tenancy under section 5 of the 1927 Act are automatically terminated, except for orders for costs, but pending proceedings under section 4 for compensation are to proceed in the court which has jurisdiction under section 63 of the present Act (Ninth Schedule). Where under Part II of the 1951 Act an application has been made for a new tenancy and rejected, or the tenant has not elected to apply, the tenancy is not to be subject to the present Act (Ninth Schedule, para. 10). Where a tenancy ended before the present Act it would not be continued by Part II of the 1951 Act unless the tenant had made an application for a new tenancy. On an application being made the tenancy would be extended by the 1951 Act, and this extension would continue after

the commencement of this Act in spite of the repeal of the 1951 Act (Ninth Schedule, para. 11). Because of the repeal, however, the application under the 1951 Act could not be heard after October 1, 1954; instead the procedure under the present Act would apply.

Property of Public Authorities

Sections 56 to 60 make special provision for property owned by the Crown and various public authorities. In general Part II of the Act binds the Crown (section 56 (1)) and Government Departments are to get the benefit of the Act in relation to premises occupied by them (section 56 (3)). Sections 57 and 58 contain provisions whereby new tenancies can be excluded, or their terms modified, in the case of tenancies of holdings owned by Government Departments and various public bodies, on the certificate of the appropriate Minister that it is necessary in the public interest, the interests of national security, or the particular purposes of the public bodies concerned. Where tenants are deprived of new tenancies, or are restricted to tenancies of a certain length, by these provisions they are entitled to compensation on the same basis as that provided under section 37 (section 59).

Improvements

The general scheme of compensation for improvements under the Act of 1927 remains in force. Alterations are made, however, by Part III of the present Act, to the time-limits for making applications, to the tenant's right to compensation, and to the provision with regard to contracting out. The time limits prescribed by section 47 for applications made after October 18, 1954, are as follows :—

(a) where a tenancy is terminated by notice to quit or by a notice under Part I or Part II of the present Act—within three months of the date on which the notice is given;

(b) where a tenancy is terminated by a tenant's request for a new tenancy—within three months of the date on which the landlord gives a notice that he will oppose the granting of a new tenancy, or a notice containing a certificate that the public interest or national security requires a change of use or occupation, and if the landlord gives no such notice then within three months of the expiry of the two months in which he could give a notice;

(c) were a tenancy comes to an end by effluxion of time—not earlier than six nor later than three months before the end of the tenancy;

(d) where a tenancy is terminated by forfeiture or re-entry—

within three months of the effective date of the order, or of the re-entry if made without an order.

Section 48 removes the disqualification from compensation for improvements carried out under statutory obligations, and improvements carried out less than three years before the end of the tenancy. Landlords cannot now object to proposed improvements in pursuance of statutory obligations and they can no longer exclude the tenant's right to compensation by offering a renewal of the tenancy. Contracting out of the compensation provisions is now completely excluded without any proviso in respect of contracts made for adequate consideration (section 49).

Miscellaneous

Part IV of the Act contains a number of amendments to the general law of landlord and tenant. Section 48 extends the operation of the Leasehold Property (Repairs) Act, 1938, to tenancies whenever granted and breaches whenever occurring, unless the section 146 notice was served, or the action was begun, before October 1, 1954. The Act is now to apply to tenancies of all premises, without regard to user or rateable value, other than tenancies of agricultural holdings, provided the tenancy was granted for not less than seven years (instead of twenty-one) and there are three years unexpired (instead of five). The Act is to bind the Crown.

The power of the Lands Tribunal to discharge or modify covenants in long leases, under section 84 (12) of the Law of Property Act, 1925, is now to extend to leases originally granted for more than forty years (instead of seventy) of which twenty-five years have expired (instead of fifty) (section 52).

The county court is given concurrent jurisdiction with the High Court to make declarations, in respect of any property under section 19 of the Act of 1927, that a landlord has unreasonably refused his consent to assignment, subletting, charging or parting with possession, making improvements, or change of user, in spite of the fact that no other relief is claimed (section 53).

A landlord of deserted property who cannot trace the tenant and has received no rent for six months may obtain an order from the county court determining the tenancy (section 54).

STIPULATIONS AS TO TIME

By G. Boughen Graham, ll.b., Barrister-at-Law.

The rule of the common law was that " time is always of the essence of the contract " so that, if any time were fixed for the completion of a contract, the stipulation had to be complied with and, if it were not complied with, the party aggrieved might bring an action for damages based upon the breach, or, where the failure to complete was such as to go to the root of the contract, might treat the whole contract as broken and discharged so that he himself was relieved of his liabilities thereunder. The courts of equity took a different view which was summarised by Lord Parker in *Stickney* v. *Keeble* [1914] A.C. 385, at p. 415 : " . . . courts of law have always held the parties to their bargain in this respect, with the result that if the vendor is unable to make a title by the day fixed for completion the purchaser can treat the contract as at an end and recover his deposit with interest and the costs of investigating the title.

" In such cases, however, equity having a concurrent jurisdiction did not look upon the stipulation as to time in quite the same light. Where it could do so without injustice to the contracting parties it decreed specific performance notwithstanding failure to observe the time fixed by the contract for completion, and as an incident of specific performance relieved the party in default by restraining proceedings at law based on such failure.

" That is really all that is meant by and involved in the maxim that in equity the time fixed for completion is not of the essence of the contract."

The Law of Property Act, 1925, s. 41, re-enacting the Judicature Act, 1873, s. 25, provides : " Stipulations in a contract, as to time or otherwise, which according to the rules of equity are not deemed to be or to have become of the essence of the contract, are also construed and have effect at law in accordance with the same rules."

In considering the combined effect of all this in practice, it is proposed first to consider what contracts, whilst they are prima facie affected by the equitable rule, are in fact excluded from its operation. It will then be possible to look at the rights and remedies available to an aggrieved party where the equitable rule does not, and where it does, apply.

The Sphere of Application of the Equitable Rule

The equitable rule applies in all cases in which specific performance might have been decreed by a court of equity before 1876. It is clear from the above-quoted extract from the speech of Lord Parker that the equitable doctrine was concerned exclusively with the conditions under which a court of equity would grant or withhold its own remedy of specific performance. Indeed the whole doctrine came to this: a court of equity would not refuse a decree of specific performance because the plaintiff asking for that remedy was himself technically and at law in default; as a concomitant to this and to render its own decree of specific performance effective a court of equity would restrain the plaintiff from bringing any action at law based upon the plaintiff's breach. If there was no question of specific performance either because the contract was not one to which that remedy was appropriate or because the plaintiff had by his conduct or otherwise disentitled himself to specific performance then the law was allowed to take its course.

Where Time of the Essence

It is fundamental that this, the essential foundation of the equitable rule, be well understood. Despite the loose and inartistic wording of the Law of Property Act, 1925, s. 41, the courts have laid down time and time again that contracts are construed in exactly the same way at law and in equity: see, for example, *Parkin* v. *Thorold* (1852) 16 Beav. 59, 66. One first construes the contract to see if there is any effective stipulation as to time at all. If there is not then, whatever the subject-matter of the contract, there is no room for the application of the equitable rule. If there is then one must look to see if the contract is one in which specific performance is involved: since, generally speaking, contracts for the sale of land are specifically enforceable it follows that in such cases the equitable rule prima facie applies. But, although there is a stipulated time for performance and the contract is one for the sale of land, it does not follow that the equitable rule will actually apply in all cases. In *Stickney* v. *Keeble*, *supra*, Lord Parker, immediately after his above-quoted words, went on to say: "... but this maxim never had any application to cases in which the stipulation as to time could not be disregarded without injustice to the parties, when, for example, the parties for reasons best known to themselves, had stipulated that the time fixed should be essential, or where there was something in the nature of the property or the surrounding circumstances which would render it inequitable to treat it as a non-essential term of the contract."

In this passage Lord Parker was restating what had been laid down by Turner L.J. in *Roberts* v. *Berry* (1852) 3 De G.M. & G. 284.

These three heads of exception may be considered in turn : in the books one sometimes sees a fourth exception mentioned—when time is made of the essence by notice. In fact, as will be seen, such a notice operates, if it operates at all, on a quite different principle. One must first consider the effect of the contract as it is concluded : only then may one consider how its operation can be effected by a notice served upon one party by the other.

(1) *Express Agreement*

At one time it was supposed that courts of equity would so zealously relieve against default that the parties could not make time of the essence of the contract even by express agreement to that end : see *Seton* v. *Slade* (1802) 7 Ves. 265, 275. Now, however, there can be no doubt that parties may do so if they so wish. In *Steedman* v. *Drinkle* [1916] 1 A.C. 275, Haldane L.C. said at p. 279: " Courts of equity, which look at the substance as distinguished from the letter of agreements, no doubt exercise an extensive jurisdiction which enables them to decree specific performance in cases where justice requires it, even though literal terms or stipulations as to time have not been observed. But they never exercise this jurisdiction where the parties have expressly intimated in their agreement that this is not to apply by providing that time is to be of the essence of their bargain. If, indeed, the parties having originally so provided, have expressly or by implication waived the provision made, the jurisdiction will again attach."

Where it is desired to exclude the equitable rule it is best to say expressly that time is to be of the essence of the contract and to provide that on default being made the aggrieved party may forthwith regard the contract as being at an end, but of course the question is always one of construction and of what the parties intended or, at any rate, " what must be judicially assumed to have been their intention "—*per* Grove J. in *Patrick* v. *Milner* (1877) 2 C.P.D. 342, at p. 348. The general principle is that the contract will be construed in the ordinary way to see if the parties not only fixed a date for completion but also intended that the contract should be completed then or not at all : if they did so intend then equity will not intervene however capricious that intention may have been.

Thus, in *Hipwell* v. *Knight* (1835) 1 Y. & C. 401 there was a stipulation that if the title were not completed within a fixed time the defendant was to be released and there were further stipulations

as to the situation of the parties in that event. In *Barclay* v. *Messenger* (1874) 43 L.J.Ch. 449 there was an agreement that money was to be paid on a given day or on a later day to be agreed upon and if not so paid the contract was to be void. In each case it was held that the intention of the parties was to make time of the essence and the equitable rule was excluded from application.

In drawing an agreement of this sort care should be taken to ensure that the contract does not contain other stipulations which are inconsistent with the intention that time should be of the essence. Thus, in *Webb* v. *Hughes* (1870) L.R. 10 Eq. 281 there was a contract which might well have led the court to suppose that the intention of the parties was for time to be of the essence, had it not been that there were provisions for the payment of interest if the matter should not be completed on the due date. It was held that these provisions showed that a possible postponement of completion was contemplated so that the parties could not have intended that time was to be of the essence. On the other hand a provision for the payment of interest will not be fatal to a contention that time is to be of the essence if, on looking at the whole contract, the court collects that impression of the parties' intentions. This is illustrated by *Harold Wood Brick Co. Ltd.* v. *Ferris* [1935] 2 K.B. 198. In that case there was a provision for completion on August 31; there was a further provision that the purchaser might complete if he wished on August 15 and yet a further provision that if completion were delayed beyond August 31 the purchase money was to be placed on deposit and interest was to be payable as from that date "but the purchase shall in any event actually be completed not later than September 15." It was held, in effect, that the provision for completion in any event by September 15 was of the essence of the contract and the other provisions were merely to enable, and indeed to encourage, the purchaser to complete earlier.

Nevertheless the presence of possibly conflicting provisions of this sort cannot but introduce further uncertainty into a matter which is uncertain enough without them and, where time is to be made of the essence by the terms of the contract, provisions as to interest on the purchase money and the like should be deleted entirely, unless it is made perfectly clear that they are only to be operative in the event of one party or the other specifically granting to the other an extension of time. It is a difficulty which is most likely to arise when one or other of the standard sets of conditions of sale is incorporated by reference.

(2) *Surrounding Circumstances*

In considering whether or not it would in a given case be inequitable to interfere with the application of the common law a court of equity is not confined to consideration of the wording of the agreement between the parties but may pay attention to the whole of the circumstances surrounding the transaction. In *Tilley* v. *Thomas* (1867) L.R. 3 Ch.App. 61 there was a contract to purchase a leasehold house, not then let, for use as the purchaser's own residence. A time was fixed for possession and it was held that this meant possession with a good title shown and that, having regard to all the circumstances and to the fact that the vendor well knew that the purchaser required the house for his own occupation, time was of the essence of the transaction. Rolt L.J. at pp. 69-70 mentions the equitable rule and goes on to say : " Then has the [vendor], who has broken his contract by not giving possession, on the day named with complete title previously shown, made out a case for relief against this breach of contract on his part? . . . . The breach may have been purely accidental, occasioned by circumstances wholly beyond the control of the [vendor], but if the relief will work manifest injustice to the [purchaser] it cannot be granted." Pausing there for a moment one sees this as fitting perfectly with Lord Parker's speech in which he refers to " surrounding circumstances which would render it inequitable . . ." to apply the equitable rule.

Rolt L.J. proceeds to examine in detail the position as between vendor and purchaser : amongst other matters to which attention is drawn he says : " At the date of the contract the [purchaser] had then recently sold his own residence and was obliged to find another within a very short period; that he bought consequently with a view to immediate occupation by himself and that the [vendor] knew this. . . ." Taking all these matters into account the court held that the surrounding circumstances were such that it would be inequitable to interfere with the due course of the law and refused the vendor a decree of specific performance.

Other examples of cases in which it has been held that the equitable rule should not apply are *Wright* v. *Howard* (1823) 1 S. & S. 190, which was concerned with the sale of land for the purpose of erecting a factory thereon, and *Re Sandwell Park Colliery Co.* [1929] 1 Ch. 281, where there was a sale by a receiver in a debenture holder's action which sale was subject to the approval of the court being obtained, and Maugham J. held that if a definite date is stated for obtaining such approval time must be taken as being of the essence in regard thereto. On the other hand these

considerations can have no validity unless it be shown that the existence of the relevant circumstances were, or must be held to have been, in the minds of both contracting parties. Furthermore, if one keeps it in the forefront of one's consideration that the whole question is whether it is or is not inequitable to interfere with the legal consequences of the contract one sees that the answer must in many cases be affected by the terms of the contract. It is not sufficient that the subject-matter be a house required for the immediate residence of one of the parties if, when the contract is looked at, it is apparent that the parties contemplated from the beginning that there might be some delay in completion. One cannot use the decision in *Tilley* v. *Thomas* to argue that it would work hardship on one party to relieve the other if that other can point to a provision in the contract whereby interest was to be paid for an indefinite period after the date fixed for completion : how can he be suffering excessive hardship if he has himself provided for the matter to be adjusted by a payment of interest? (See *Webb* v. *Hughes, supra*).

(3) *Nature of the Property*

In general it is held to be inequitable to interfere with the operation of the common law rule where the property is of a wasting or fluctuating nature. In *Tilley* v. *Thomas, supra*, Cairns L.J. suggests as examples reversions, mines or trades. Other examples are to be found in estates determinable on a life or lives (see *Withy* v. *Cottle* (1823) T. & R. 78) or short leaseholds (*Hudson* v. *Temple* (1860) 29 Beav. 536).

Apart from this type of transaction it is now well-settled that, if the subject-matter of the sale is a licensed house, then time is of the essence and the equitable rule will not be applied. Examples in the case of licensed houses are *Coslake* v. *Till* (1826) 1 Russ. 376; *Day* v. *Luhke* (1868) L.R. 5 Eq. 336; *Cowles* v. *Gale* (1870) L.R. 7 Ch.App. 12; and *Lock* v. *Bell* [1931] 1 Ch. 35. This last case was an interesting one on the point of the precise date upon which completion was to take place and upon the effect of a waiver thereof and will be mentioned on this aspect below. A question of great practical importance is whether or not time will be held to be of the essence in all cases where lands or buildings upon which a business is carried on are sold together with that business as a going concern or whether the doctrine is restricted to licensed premises. To some extent the licensed house cases are distinguishable because there enters into them the consideration of the transfer of a valid justices' licence.

If one looks at the judgment in *Coslake* v. *Till*, *supra*, which seems to be the leading case, one finds that the *ratio decidendi* appears to be equally applicable to almost any retail or trading business. At p. 379 Gifford M.R. said : " The stock, too, was to be taken on the 26th March, and that stock was of a fluctuating kind. The quantities of ale, beer and spiritous liquors would probably not be the same on the 27th March as they were on the previous day. When the subject-matter, which is to be bought and sold, is in its very nature, exposed to daily variation, time must necessarily form a very material ingredient in the contract." At p. 380 he held that the vendor was justified in taking the attitude that : " Inasmuch as I shall incur fresh liabilities by retaining the premises; as the stock will in the meantime vary; as I cannot shut up this house and suspend this trade for a day or two, the value of it as a public house depending on its being kept regularly open; I shall, therefore, no longer consider myself as bound by this contract."

This view that the equitable rule will frequently be held to be excluded on any sale of business premises together with the goodwill of the business as a going concern receives some support from *Harold Wood Brick Co.* v. *Ferris*, *supra*. In that case the subject-matter of the sale " although in form for the sale of land was really for the sale of land which had been developed for the purpose of a brickfield, together with the tools of trade thereon, some of them of very considerable value." Greer L.J. preferred to decide the case on the terms of the contract and expressly reserved the point as to whether the equitable rule would have been excluded by reason of the nature of the subject-matter. But Slesser L.J., at p. 207, said : " Being thus a property intended to be used for trade purposes it would be inequitable to treat the time for completion otherwise than as the essence of the contract."

Rights of the Parties where Time is of the Essence

It is apparent from what has gone before that time will be of the essence where, on a true construction of the contract, the parties have stipulated for completion on a fixed date and where the equitable rule is excluded because the court considers that it would be inequitable to interfere with the ordinary course of the common law : the court will so consider it to be inequitable either because the parties have made clear their intention that time should be of the essence or because of the surrounding circumstances or the nature of the property sold.

In such a case, where there is a failure to complete upon the

date stipulated the aggrieved party may forthwith bring an action for damages or for specific performance if the contract is one to which such a remedy is appropriate. Furthermore, if the breach is one that goes to the root of the contract, he may treat the contract as at an end and himself discharged from his obligations thereunder. Whether or not any given breach is sufficient so to discharge the contract is matter of fact in every case. In *Mersey Steel and Iron Co.* v. *Naylor* (1884) 9 App.Cas. 434 Lord Selborne said, at p. 438 : " You must look to the actual circumstances of the case in order to see whether one party to the contract is relieved from its future performance by the conduct of the other : you must examine what that conduct is so as to see whether it amounts to an absolute refusal to perform the contract . . . and whether the other party may accept it as a reason for not performing his part. . . ."

This is a matter which most often arises in the case of mercantile contracts for the sale of goods by instalments and it is largely dealt with in the Sale of Goods Act, 1893, s. 31. It is not proposed to pursue it further. Conveyancers occasionally encounter contracts for the sale of land where completion is to take place by instalments : in such cases, if time is of the essence, it is thought likely that a breach of any particular phase of completion would be likely to go to the root of the contract. Each case must be decided on its facts. However, it is not very often that one meets with contracts for the sale of land by instalments and it is not very often that one meets contracts for the sale of land of which time is of the essence ; it must be quite rare for both features to be found together. *Thorpe* v. *Fasey* [1949] Ch. 649 was a case which concerned a contract for the sale of land by instalments but it was held that time was not there of the essence. It is chiefly important in the context of this article on the matter of repudiation and is mentioned again below. It may be noted in passing that there was in that case a claim for rescission and it was held that as one parcel of land had been taken no such remedy could be obtained because (a) a contract, if it is to be rescinded, must be rescinded *in toto* ; and (b) the contract was a single contract for the sale and purchase of the whole of the land and not a series of separate contracts.

Waiver

Even though the contract is one of which time is originally of the essence it is clear that the stipulation may be waived. Unfortunately there seems to be some apparent divergence of judicial opinion as to the precise results of waiver. The word " apparent "

is used because it is submitted that the two lines of cases can be distinguished on one of two grounds : which ground is to be preferred seems quite uncertain. In *Lock* v. *Bell*, *supra*, there was a contract for the sale of a licensed house : hence the equitable rule was excluded by reason of the nature of the property and time was of the essence. Completion was fixed for " on or about November 10 "—not, be it observed, " on or before November 10." On November 8 or 9, however, the vendor agreed to allow the purchaser to delay completion until December 8. Maugham J. (as he then was) took the view that, had there been no extension of time allowed, the contract was to have been completed on or very shortly after November 10. He said, at p. 44 : " Its construction must be that completion must take place by the date mentioned or within a very short time thereafter. Accordingly I think that, having regard to the subject-matter of the contract, time must be regarded as essential in this respect, and the circumstance that a little latitude is to be given with regard to the precise day does not really affect the matter. . . ."

He then went on to consider the effect of the extension of time until December 8 and took the view that this made unnecessary any consideration of the precise amount of latitude to be allowed after November 10 because the parties had agreed to substitute December 8 which date was thus substituted for " on or about November 10 " so that it, in its turn, became a date essential to the contract. In short, the case so far as waiver is concerned may be summarised in this way : where time is of the essence because the equitable rule is excluded by reason of the subject-matter of the contract and one party allows the other an extension of time then the new date so fixed becomes in its turn of the essence of the contract.

On the other hand in *Webb* v. *Hughes*, *supra*, Malins V.-C. said, at p. 286 : " But if time be made the essence of the contract that may be waived by the conduct of the purchaser; and if the time is once allowed to pass and the parties go on negotiating for the completion of the purchase, then time is no longer of the essence of the contract." And a similar principle was applied in *Kilner* v. *British Columbia Orchard Lands* [1913] A.C. 319, which case was explained in *Steedman* v. *Drinkle*, *supra*, at p. 279, as an appeal " in which the facts were that a company had sold land for a price to be paid in instalments at specific dates . . . time was . . . declared to be of the essence of the agreement. Default in punctual payment having occurred, the company claimed a declaration that the agreement was at an end . . . the purchaser counterclaimed specific performance . . . the Board went on to

declare specific performance. As time was declared to be of the essence of the agreement this could only have been decreed if their Lordships were of the opinion that the stipulation as to time had ceased to be applicable. On examining the facts which were before the Board it appears that their Lordships proceeded on the view that this was so. The date of payment of the instalment which was not paid had been extended, so that the stipulation had not been insisted on by the company. The learned counsel . . . for the purchaser contended that when the company had submitted to postpone the date of payment they could not any longer insist that time was of the essence. Their Lordships appear to have adopted that view and on that footing alone to have decreed specific performance."

All these cases were concerned with contracts for the sale of land where the equitable rule had been excluded or might have been excluded for one reason or another. *Charles Rickards Ltd.* v. *Oppenhaim* [1950] 1 K.B. 616 was a mercantile contract whereby one party undertook to construct coachwork upon a motor-car chassis the property of the other. Having disposed of various arguments not relative to the present discussion the Court of Appeal apparently took the view that once the date originally stipulated for had been waived then time was no longer of the essence. At p. 624, Denning L.J. said: " It would be most unreasonable if the defendant, having been lenient and waived the initially expressed time, should, by so doing, have prevented himself from ever thereafter insisting on quick delivery. In my judgment he was entitled to give a reasonable notice making time of the essence of the matter."

It is clear that there are here two differing views. One is that if time is originally of the essence and an extension is given then time remains of the essence but now the second date is the crucial one; the other view is that, once an extension is given, time ceases to be of the essence unless and until it is made so by a valid notice to that end. It may be that there is some distinction to be taken as to whether time is originally of the essence because the parties, capriciously or not, expressed it to be so or because of the nature of the property. On this view it could be said that where, as in the case of a licensed house, the court of its own volition considers it inequitable to interfere with the stipulation as to time then, when a new date is fixed, the court will enforce that date as it would have enforced the old date, but where it is only inequitable to interfere because the parties have stipulated for time to be of the essence then, if they change their minds and agree to an extension, the original agreement for time to be of the essence goes by the

board. An alternative distinction may be taken based on the terms of the waiver itself : thus there is a clear distinction between *Lock* v. *Bell*, *supra*, and *Webb* v. *Hughes*, *supra*; in the first there was an extension until a definite day, in the second Malins V.-C. is envisaging a general continuance of negotiations. On this basis time remains of the essence in the case of a definite extension but ceases to be of the essence if the substituted date is left open. Unfortunately this breaks down when one looks at *Kilner's* case, *supra*, where the extension was until a definite date.

Whilst the precise position is therefore obscure it is clear that, when there is a contract in which time is of the essence, a party must be very careful indeed about allowing any extension of that time to the other or he may find that he cannot get the contract back on to the footing that time is of the essence without giving a notice to that end; and as will be seen the giving of an effective notice is not so simple as it looks. It follows, therefore, that, when a party is asked for an extension of time where time is of the essence, he should ensure that he only grants it on condition that the variation of the terms of the original contract is in writing, that a precise date is specified for the postponed performance and that the other party specifically and in the clearest terms agrees that time is to be of the essence of the contract as thus varied.

Rights of the Parties where Time is not of the Essence

No stipulation as to time at Law

It is necessary to make a sharp distinction between cases where on a true construction of the contract the parties have not made any stipulation whatever as to the time of performance and cases where the parties have made such a stipulation but where the equitable rule intervenes to relieve the party in default from the consequences of that default. In the first place time is not of the essence at law and there is no room for the intervention of equity : in the second case time is of the essence at law but is not of the essence so as to prevent a court of equity making a decree for specific performance.

Where there is no stipulation at all as to time then the law implies an obligation to perform in a reasonable time and in such cases it has, in the words of Lord Watson, in *Hick* v. *Raymond and Reid* [1893] A.C. 22, at p. 32, "invariably been held to mean that the party upon whom it is incumbent duly fulfils his obligation, notwithstanding protracted delay, so long as such delay is attributable to causes beyond his control and he has acted neither negligently nor unreasonably." It follows that until the aggrieved

party can show that a reasonable time, ascertained on that basis, has been exceeded, there is no breach real or technical at law or in equity, hence, there being no breach, he has no action for damages, for specific performance or otherwise. In these modern days it is not common to find a contract for the sale of land where there is no specified completion date, but one does occasionally meet with one : indeed *Green* v. *Sevin* (1879) 12 Ch.D. 589, which is discussed below, is an example.

Stipulation as to time relieved against by Equity

The type of contract more usually met with is one in which there is a stipulated time for completion but, on the principles discussed above, a court of equity will relieve one party against a breach. Consider the ordinary contract for the sale and purchase of land and suppose that the purchaser has done all that lies upon him to do by the date fixed for completion but that the vendor fails to complete. This is a set of circumstances not infrequently met with : sometimes the vendor's failure is caused by difficulties in making title and sometimes because the contract provides for vacant possession on completion and the vendor, having been unduly optimistic about his chances of obtaining alternative accommodation for himself, is unwilling to keep to his bargain. Now it is clear that, despite his initial failure, the vendor can come to the purchaser a week or a month later and offer to complete; if his offer to complete is refused he can obtain a decree of specific performance. Conversely, the purchaser cannot consider the contract at an end and himself freed from his obligations thereunder. Now the purchaser, in such circumstances wants one of two things; either he wants to be out of his contract (with or without damages against the vendor) or he wants to compel the vendor to carry out the contract; unfortunately in practice he very often gives the impression of not knowing which he does want.

Suppose he makes up his mind that he wants to go on with the contract and make the vendor perform : in this case he is at one with the courts of equity for the whole basis and substance of the equitable rule is that contracts should be performed if possible. What the purchaser should do is forthwith, and with no further preliminaries, bring an action against the vendor for specific performance. There is nothing whatever in the rule that time is not of the essence in equity to stop him, for that rule exists only so that a court of equity may decree specific performance notwithstanding a breach of legal obligations, and that is just what the purchaser is asking for. It is only when the purchaser decides that

he does not want specific performance but wants to be out of his bargain that he finds his way obstructed by the equitable rule : it is then that he must consider serving notices upon the vendor and this matter is discussed below.

It is not always realised in practice that an action for specific performance is in every case available immediately the contractual date for completion is past. The reason it is not realised is doubtless the heresy that contracts are differently construed in equity : from this it is argued that there is no breach until time has been made the essence and hence there can be no demand for specific performance until then. The immediate result of all this is that a purchaser who wants specific performance proceeds to serve notices purporting to make time of the essence, which is a mere waste of time.

It has been said above that a purchaser whose vendor fails to complete on the day stipulated cannot forthwith treat the contract as at an end. What he can do, however, is to couple with his own action for specific performance a claim for damages for the vendor's delay in completing. It is not to be forgotten that the limitation upon the recovery of damages against a vendor commonly known as the rule in *Bain* v. *Fothergill* (1874) L.R. 7 H.L. 158 applies only where the breach arises from inability to make title; it has no application where the delay arises from the refusal of the vendor to take the necessary steps to give the purchaser possession pursuant to the contract : see *Engall* v. *Fitch* (1868) L.R. 4 Q.B. 659.

A neat example of the matters discussed in this section is to be found in *Phillips* v. *Lamdin* [1949] 2 K.B. 33. There was a contract for the sale and purchase of leasehold premises, completion to be on March 28, 1947. Suffice it to say that, as is so common, completion did not take place on that day. In a letter dated March 28 the purchaser's solicitors warned the vendor's solicitors that they would not go beyond April 2 and threatened an immediate action for specific performance if there was no completion on that day. In fact the writ claiming specific performance was issued on April 15. In the words of the judgment at p. 39 : " The fact that there was a writ for specific performance brought either the solicitors for the defendant or the defendant to their senses," and the sale was completed on June 5. The purchaser continued with the claim for damages for delay and on that score, and in the circumstances of the case, recovered approximately £195.

In this section we have discussed the position where it is the vendor who refuses to complete : so far as stipulations as to time are concerned matters are no different where it is the purchaser

who is in default. In that case, however, the vendor will, for obvious reasons prefer rescission and forfeiture of the deposit rather than specific performance. Indeed, if the purchaser is unable to complete, a decree of specific performance will be useless : see *Stone* v. *Smith* (1887) 25 Ch.D. 188. If the purchaser has failed to complete by the specified date the vendor can ask for specific performance forthwith although he cannot put an end to the contract without first serving a notice.

The real trouble arises where a vendor does want specific performance and the original contract incorporates the Law Society's Conditions of Sale. Frequently it is found that a vendor who really wants specific performance serves a notice under clause 36 of the 1953 conditions (or its predecessor, clause 32 of the 1934 edition) and then follows this with an action for specific performance of the contract. Unfortunately such a notice, if it is effective at all, is effective to make the contract void except as therein provided; the contract being void it is too late to ask for an order that it be specifically performed.

Repudiation

It may be that, when the facts are examined, one party has not only failed to carry out his contract according to its terms but has actually repudiated it. In this case there is no need for, and no room for, notices making time of the essence and there is no longer room for the operation of equitable relief for the party who has thus repudiated. Such repudiation may take place either before or after the date fixed for completion and may take the form either of the promisor disabling himself from carrying out his part of the bargain or of his expressly refusing to carry it out.

Promisor disabling himself

It is difficult to imagine circumstances in which a purchaser, whose principal duty is the payment of money, may have disabled himself from carrying out his promise. Even if he divests himself of all his assets it cannot be certain that he may not acquire more. In this connection it has recently been decided in *Jenning's Trustee* v. *King* [1952] Ch. 899 that (to quote the headnote): " A vendor of land (under a contract where time is not of the essence) who receives notice between the date of the contract and the time fixed for completion that the purchaser has committed an act of bankruptcy is not entitled to treat that notice as a repudiation of the contract entitling him forthwith to rescind and treat the contract as at an end and thus defeat the rights under the contract of the

purchaser's trustee in bankruptcy if adjudication in bankruptcy should follow."

It is clear that if time is of the essence of the contract and is fixed for not more than three months after the act of bankruptcy the position is otherwise because in that case there cannot be completion on the due date and there is no equitable rule to relieve against such non-completion : see *Powell* v. *Marshall, Parkes & Co.* [1899] 1 Q.B. 710. In general, apart from bankruptcy, the difficulties of showing that a purchaser has impliedly repudiated the contract is to be seen from *Cornwall* v. *Henson* [1900] 2 Ch. 298.

A vendor, however, may well repudiate by disabling himself from carrying out his promise. There is authority on the point as old as 21 E. IV. 54, pl. 26, *per* Choke J. : " If you are bound to enfeoff me of the manor of D before such a feast, and you make such a feoffment of that manor to another before the feast, you have forfeited the bond notwithstanding that you have the land back before the feast, having once disabled yourself from making the said feoffment."

Express refusal

It is equally open to either party to refuse to carry out his part of the contract either on the due date or at all and if he does so then the other party may take that as a repudiation and may either rescind and ask for damages forthwith (see *Hochster* v. *De La Tour* (1853) 2 E. & B. 678) or he may do nothing and keep the contract on foot until the due date for completion in which event the party who repudiated may change his mind or may find himself provided with an unexpected defence by reason of supervening events (see *Avery* v. *Bowden* (1855) 2 E. & B. 714). It is essential, however, that there be an express refusal. If the contract is one of which time is of the essence then a refusal to complete upon the precise day fixed is enough; if the contract be one to which the equitable rule applies it is not enough. If the purchaser says " I cannot and will not complete upon the day fixed " or words to that effect there is no justification for the vendor forthwith to rescind : the purchaser might be quite ready and willing to complete the next week and if he offered so to do he would be relieved against the consequences of his delay. On the other hand if he says that he has no intention whatever of completing either on the day fixed or at all then there is an express repudiation. It may or may not be sufficient that he says that he cannot and will not be able to complete : an expression of inability to complete is not necessarily the same as an expression of intention not to complete and the

inability may be cured in time. Many attempts have been made to say that the reiteration of "I cannot" is the same as saying "I will not" (see, for example, *Thorpe* v. *Fasey*, *supra*). Whilst in some cases "I cannot" is certainly equivalent to "I shall not" it is difficult to see how it can be made the equivalent of "I will not." Repudiation is based upon refusal and not upon inability and hence one must usually show a clear and unqualified refusal to perform either on the due date or at all.

Notice

Nature and effect of a valid notice

At one time a notice by one party to another demanding completion by a specified time or not at all was quite ineffective: see *Reynold* v. *Nelson* (1821) 6 Mad. 18. It is clear upon general principles that once a contract has been concluded it is not open to either party, by serving a notice upon the other, or by any other form of unilateral action, to vary its terms. It is, however, open to a party, where there has been excessive delay, to serve upon the other a notice that unless the contract is completed within a limited time he will rescind and this is the only true basis of "making time of the essence by notice." It is explained by Fry J. in *Green* v. *Sevin* (1879) 12 Ch.D. 589 at p. 599. "It has been argued that there is a right in either party to a contract by notice so to engraft time as to make it of the essence of the contract where it has not originally been of the essence independently of delay on the part of him to whom notice is given. In my view there is no such right. That which is not of the essence of the original contract is not to be made so by the volition of one of the parties unless the other has done something which gives a right to the other to make it so. You cannot make a new contract at the will of one of the contracting parties. There must have been such improper conduct on the other as to justify the rescission of the contract *sub modo*, that is, if a reasonable notice is not complied with."

Before examining from a practical point of view the requisites for the giving of a valid notice, it is well to emphasise yet again that the giving of such a notice is the first step towards rescinding the contract. It is not a step towards enforcing the completion of the contract. It may well be that when the party on whom such a notice is served is fairly faced with the alternative of either completion or rescission he will take steps to complete. If the aggrieved party is satisfied with this then the notice will have indirectly resulted in the performance of the contract: but if the

aggrieved party wants performance of the contract and nothing else then the giving of a notice is not the way to go about it.

When a valid notice is given its effect is to limit a specific day for completion and to make time of the essence of the contract in that regard. And if time is of the essence of the contract it is of the essence for both parties. In *Finkielkraut* v. *Monohan* [1949] 2 All E.R. 234 there was a contract for the sale of land with no date fixed for completion. That contract had been concluded on December 10, 1947. On March 31, 1948, the vendor sent to the purchaser a notice calling for completion on April 14, 1948, *i.e.*, a fourteen-day notice. On April 14 the purchaser was prepared to complete but the vendor, for various rather obscure reasons, was not. Whereupon the purchaser retaliated by a three-day notice on the vendor to complete, and on April 22 commenced an action for a declaration that he was entitled to rescind and recover his deposit. On April 30 the vendor at last was ready to complete and on May 5 commenced an action for specific performance. It was held that the vendor could not be heard to say that the notice of March 31 was not effective to make time of the essence and, as she had failed to complete on the date specified in that notice, the purchaser was entitled to rescind.

Circumstances in which Notice may be required

There are three different sets of circumstances in which a party who contemplates rescission or an action for damages may find it necessary to serve a notice. The first is where, as in *Green* v. *Sevin*, *supra*, the contract never stipulated for any time for completion. As has been said, in such cases the obligation is to complete within a reasonable time and the effect of such a notice is, in general terms, an allegation by the person serving it that a reasonable time has in his opinion elapsed. Clearly, if it be the fact that a reasonable time has not elapsed, then such a notice is premature and ineffective. Secondly, a notice may be required in cases such as *Charles Rickards Ltd.* v. *Oppenhaim* [1950] 1 K.B. 616 where time was originally of the essence of the contract and where, although the contract was never affected by the equitable rule, there has been a waiver, and the effect of that waiver has been taken to be that time has ceased to be of the essence (see *ante*, p. 461). Here the effect of the notice is substantially to restore the parties to their original positions with a new date fixed in place of the original one. Thirdly, and this is the usual case, where the contract provides for a completion date but where the parties are relieved against a breach of that stipulation by

the equitable rule. In this case the effect of the notice is to bring about a state of affairs in which a court of equity will consider it no longer inequitable to let the law take its course.

In theory, there is no reason why there should not be three separate and distinct criteria to be applied in considering the validity of a notice in each of the three sets of circumstances. In fact, although there does not seem to be a case in which the matter has been thoroughly gone into, the courts seem satisfied to apply the same tests in each case. The reason for the similarity between the first and the third cases will be seen when the requirements of notice are discussed below : in short, a valid notice in the third case cannot be served until an unreasonable time has elapsed; that being so, it follows that a contract falling into the first category would by then be due for performance. It is less easy to find any logical reason connecting the second and third cases but in fact the Court of Appeal expressly applied the principles of the third case to an example of the second case in *Charles Rickards Ltd.* v. *Oppenhaim*, *supra*. As a matter of practical convenience it is well that similar tests are to be applied.

When Notice may be given

In *Taylor* v. *Brown* (1839) 2 Beav. 180, 183, Langdale M.R. said : " If any unnecessary delay is created by one party the other has a right to limit a reasonable time," and in *King* v. *Wilson* (1843) 6 Beav. 124, 126, the same judge said : " Where there is a great and improper delay on one side the other has a right to fix a reasonable time." Similarly, in *Pegg* v. *Wisdon* (1852) 16 Beav. 239 there was mention of " improper delay," and, in *Wells* v. *Maxwell* (1863) 33 L.J.Ch. 44, of " gross, vexatious and unreasonable delay "; in *Stickney* v. *Keeble* [1915] A.C. 386, 418, Lord Parker said that a notice could properly be served on a party who had been guilty of " unnecessary delay."

It is clear from all these judgments that before a notice can be served putting the other party on time with a view to rescission it is necessary that he should be very considerably in default : that is to say one cannot validly serve such a notice a couple of days after the time fixed for completion. If authority for that proposition be needed it is to be found in *Smith* v. *Hamilton* [1951] 1 Ch. 174, *per* Harman J. at p. 181 : " The day for completion being April 4 it is clear, in my judgment, that the vendor cannot, on the next day, April 5, serve a notice on the footing that there has been such impropriety on the part of the purchaser as entitled him, as it were, to engraft time on the contract."

In *Phillips* v. *Lamdin* [1949] 2 K.B. 33, at p. 42, it is suggested, in general terms, that "you may make time of the essence by giving an appropriate notice during the progress of the negotiations towards completion." The learned judge did not make it clear whether he was referring to negotiations before or after the date fixed in the contract for completion but it is clear that it must be read in the latter sense and then only subject to the qualifications suggested by the cases just quoted. But it has been suggested that in certain circumstances it may be possible to serve a notice before the contractual date for completion. One would emphasise, however, that it was but a suggestion and there is no real authority on the matter. In *Smith* v. *Hamilton*, *supra*, at p. 182, Harman J. examined correspondence which had passed between the parties prior to the completion date and said: "If that letter had said 'I shall not complete' or 'I cannot complete' or 'Heaven knows when I may be able to complete' that would perhaps have entitled the vendor to deliver an ultimatum. But in my judgment the letter of March 29, which merely said that she was very sorry but she could not complete just at the moment was far from being an anticipatory breach of the contract or even the kind of impropriety to which Fry J. alluded in *Green* v. *Sevin*." It seems from this passage that the learned judge envisaged some form of statement prior to the completion date which, whilst it did not amount to an absolute repudiation as mentioned above, yet went further than a mere inability to complete at the precise time fixed and which might be sufficient to found a notice putting the party making it on time. There does not seem to be any reported case in which a notice given in these circumstances has been held to be valid. The great difficulty in this matter is that one cannot test the validity of the notice until one actually takes steps to rescind and hence it requires a certain degree of hardihood to test out new doctrines of this sort.

In the ordinary case where the contractual time for completion is past the real difficulty is to know to what extent a party must be in default before notice can be given and the answer, unsatisfactory as it may be, is to be found in *MacBryde* v. *Weeks* (1856) 22 Beav. 533, *per* Romilly M.R. at p. 543: "What constitutes a reasonable notice and a reasonable time to be fixed in it must depend upon the contract and the circumstances of each case." Two matters may be indicated as particularly important, the conduct of the party serving the notice and the nature of the subject-matter of the contract.

Thus, in *Green* v. *Sevin*, *supra*, the purchaser sent a draft assignment to the vendor's solicitors who kept it for two years and,

within a week or a little more of its being returned, served an eighteen-day notice on the purchaser. It was held that there had been no undue delay by the purchaser justifying the notice. Furthermore it is perfectly clear that, however much one party may be in default, a notice served on him by the other will be ineffective if the party serving the notice was not, at the time of its service, himself ready and able to carry out his part of the bargain. For a modern instance see *Pedigree Stock Farm Developments* v. *R. Wheeler & Co. Ltd.*, an interesting case which is only reported at (1950) 155 E.G. 66.

Where the nature of the property sold, whilst not such as to exclude entirely the operation of the equitable rule, is yet such that it is clear that the parties must have envisaged reasonable expedition then it seems that a notice may be served rather sooner than might otherwise be the case. Thus in *MacBryde* v. *Weeks*, *supra*, the contract was for a lease of land which was to be used with adjacent land over which the intending lessee had a mining lease. The lessee had been left without communication from the lessor for nine weeks and served upon him a notice limiting one month for completion : it was held that having regard to the nature of the subject-matter the notice was good. Similarly in both *Compton* v. *Bagley* [1892] 1 Ch. 313 and *Stickney* v. *Keeble* [1915] A.C. 386 the subject-matter of the contracts was a farm sold with vacant possession and the nature of the property was considered to be a relevant factor.

Period of Notice

When it has been established that the notice itself has not been premature it is necessary to consider further whether the time limited thereunder is reasonable and sufficient. In *Crawford* v. *Toogood* (1879) 13 Ch.D. 153 it was decided that the question of reasonableness must be determined as at the date upon which the notice is given. In that case a five-week notice was served by the purchaser on September 24. The learned judge considered what remained to be done and found that the abstract had to be submitted to the purchaser, requisitions exchanged, the conveyance prepared and engrossed and completed, and he reached the conclusion five weeks was not sufficient, especially when it was remembered that the notice was served in the long vacation. Another interesting example of insufficient notice was *Green* v. *Sevin*, *supra*. There, it will be recalled, the vendors had delayed for two years and had then, a week after returning the draft assignment to the purchasers, served an eighteen-day notice. It

was held that even if the notice had not been premature it was nevertheless an unreasonably short period of notice because the great delay on the part of the vendor had rendered it justifiable for the purchaser to invest his purchase-money in such a way as to make it less accessible than if so long a delay had not occurred.

But this test, sufficiency of time to do that which remains to be done, is not conclusive in every case. Thus in *Compton* v. *Bagley*, *supra*, at p. 320, Romer J. said : " It is clear that a period of fourteen days is too short a time for the delivery of the abstract. In considering whether it was too short or not, one must consider the whole of the circumstances including the nature of the property sold and consider the fact that it was important to the purchaser that possession was to be given at or soon after Michaelmas." Again in *Stickney* v. *Keeble*, *supra*, Lord Parker said, at p. 419 : " . . . In considering whether the time so limited is a reasonable time the court will consider all the circumstances of the case. No doubt what remains to be done at the date of the notice is of importance, but it is by no means the only relevant fact. The fact that the purchaser has continually been pressing for completion, or has before given similar notices which he has waived, or that it is specially important to him to obtain early completion are equally relevant facts." This passage was cited and followed in *Charles Rickards Ltd.* v. *Oppenhaim*, *supra*. Time had originally been of the essence of this contract but it had been waived more than once. It was held that, in all the circumstances, a four weeks' notice was good although it appeared that there was never any real prospect of getting the work done in time.

Two other modern cases may be mentioned in this connection. *Pedigree Stock Farm Developments* v. *R. Wheeler & Co. Ltd.* (1950) 155 E.G. 66 is an unsatisfactory authority because it is understood that the order was discharged by consent on appeal, the purchaser intimating that he could not complete. When a fifteen-day notice was served there was a conveyance to be prepared and there was a sum of £405,000 to find for the balance of the purchase-money. Vaisey J. thought that the length of notice was always very difficult to fix and that a cautious vendor should always err on the generous side ; on the facts before him he thought the notice was insufficient and ineffective. Whatever may be the value of the case on other matters this expression of judicial opinion cannot but be valuable. The very latest case is *Re Engall's Agreement* [1953] 1 W.L.R. 977. Vaisey J. did not find it necessary to decide whether or not the notice was valid but he did say, at p. 979 : " In the circumstances it is open to some doubt whether the notice to complete was long enough. It might have been long

enough had it been a twenty-one days' notice to pay the purchase-money, served after the conveyance had been agreed. When it was served, however, the draft conveyances had not been submitted and the notice required that all this should be done and the purchase-money paid within fifteen or sixteen days after service of the notice. It may well be that the notice was too short."

It is clear that the position of a party to a contract who wishes to serve a notice to lead to rescission is not a happy one. He must first decide whether the time is ripe to serve a notice at all and then he must gauge how long a period to limit for completion having regard to all the circumstances. It may be that the service of the notice will operate to some degree *in terrorem* and will bring the other party to complete; if it does it will, in many cases, have served its purpose although one must again emphasise that if the aggrieved party really wants completion and not rescission he should commence proceedings for specific performance. But it may be that it does not result in completion and, in that case, there is nothing left but to commence proceedings for rescission, or damages or forfeiture of deposit or whatever may be appropriate to the circumstances. It is only at that stage, when the action come to trial, that the party who has given the notice can ascertain whether or not it is an effective one. If it is he succeeds in his action, if not he pays costs and starts again. An ingenious method of testing the validity of the notice in the courts at an earlier stage has recently been decided to be ineffective in *Re Engall's Agreement*, *supra*. This method appeared to be appropriate where the contract had been registered under the Land Charges Act, 1925, and took the form of an application under section 10 (8) of that Act for the removal of the charge. But Vaisey J. has now held that such an application is misconceived because the question whether or not the entry on the register ought to be vacated depended upon whether or not the contract subsisted and the procedure under section 10 (8) was inappropriate for the determination of that question.

Of course, if it is remembered that the real effect of a notice where the equitable rule applies is to bring about a set of circumstances in which a court of equity will no longer consider it equitable to interfere with the operation of the common law, or to put it the other way round, will consider it inequitable not to let the common law take its course, it is clear that the service of, and the time limited by, such a notice must be tested by reference to all the surrounding facts and can never be governed by rule of thumb. This, however, is little consolation to the practitioner and it is hardly surprising that attempts have been made to regulate the

requisites of a valid notice by provisions to that end in the contract. Thus, in the Law Society's Conditions of Sale such an attempt is made so far as concerns notices by the vendor to the purchaser but not vice versa. The precise effect of such a provision is an interesting question of the construction of the words used against the background of the matters raised in the article. It is, however, a question which may conveniently be left for another occasion.

THE LAW OF RATING

PART V

By William Scrivens, m.a., ll.b., Barrister-at-Law, and
K. F. Goodfellow, m.a., ll.b., Barrister-at-Law

It is not possible within the scope of these articles to consider in detail the special problems of valuation which arise in connection with all the different types of rateable hereditament. It is proposed, however, in this article to consider the following topics, both because they give rise to special problems or principles of valuation and because they concern hereditaments of the classes most commonly encountered :

(1) The Valuation of Plant and Machinery.
(2) The Valuation for Rating Act, 1953.
(3) Agricultural Dwellings.
(4) Woodlands.
(5) Public Houses.

For detailed consideration of the problems arising upon the valuation of gas and water undertakings, cemeteries, brickfields, mines, moorings, tithes, sporting and common rights, tolls, canals and navigable rivers, reference must be made to the standard works on the law of rating.

(1) Valuation of Plant and Machinery

When the annual value of an industrial hereditament has to be calculated, it is obviously necessary to know how far the plant and machinery on the premises are to be regarded as part of the hereditament, that is how far they are to be regarded as provided by the landlord and rented by the tenant.

The answer to this problem is provided by section 24 of the Rating and Valuation Act, 1925, and by the Plant and Machinery (Valuation for Rating) Order, 1927 (*a*). It is provided by section 24 that plant and machinery of the classes specified in the Order are to be deemed to be a part of the hereditament, but that no account is to be taken of the value of any plant or machinery on the hereditament which is not within the classes specified in

(*a*) S.R. & O. 1927, No. 480.

the Order (*b*). Thus plant and machinery within the Order is to be regarded as provided by the landlord as part of the hereditament and rented by the tenant (*c*), but all other plant and machinery is to be disregarded.

Such a solution is, however, appropriate only in those cases where the annual value of a hereditament is determined by reference to market rents. It is not appropriate where some exceptional method of valuation, such as "the profits basis" has to be employed. Accordingly it is expressly provided that section 24 of the Act of 1925 shall not apply to any "hereditament the value of which is ascertained by reference to the accounts, receipts or profits of the undertaking carried on therein" (*d*).

The Plant and Machinery (Valuation for Rating) Order, 1927

The Order comprises four classes of plant and machinery which are deemed to be a part of the hereditament. The first class is subdivided into two. Class 1 (a) lists certain types of plant and machinery, such as steam boilers and engines, dynamos, storage batteries, static transformers, cables, conductors, water wheels and turbines, hydraulic engines, air compressors, windmills, shaftings and couplings and all steam or other motors used for driving any of such plant or machinery (*e*). All such plant and machinery are to be deemed to be a part of the hereditament if "used or intended to be used mainly or exclusively in connection with the generation, storage, primary transformation (*f*) . . . or main transmission (*f*) . . . of power in or on the hereditament."

Class 1 (b) is similarly framed and specifies certain types of plant and machinery which are to be regarded as part of the hereditament if "used or intended to be used mainly or exclusively in connection with the heating, cooling, ventilating, lighting, draining or supplying of water to the land or buildings of which the hereditament consists, or the protecting of the hereditament from fire." Plant or machinery which performs any of the above functions in the course of the manufacturing or trade process is, however, expressly excluded (*g*).

(*b*) S. 24 (1) refers to the classes of plant and machinery specified in the Third Schedule to the Act. The Order of 1927 was, however, substituted for the Third Schedule: see s. 24 (5).

(*c*) *Smith* v. *Willesden Union* (1919) 89 L.J.K.B. 137.

(*d*) s. 24 (1).

(*e*) This is not a full list of the plant and machinery specified.

(*f*) This expression is further defined in the Order.

(*g*) The Order also contains a Schedule of Accessories consisting of items of plant and machinery which are to be treated as part of the hereditament if used in connection with or as accessory to any of the plant or machinery within Class 1.

Classes 2 and 3 are relatively simple, comprising respectively "Lifts and elevators mainly or usually used for passengers" and "Railway and tramway lines and tracks."

Class 4 specifies certain parts of a plant or a combination of plant and machinery including blast furnaces, burners, forges, furnaces and kilns, crane gantries, elevators and hoists, floating docks and pontoons, cooling and water tenders and vats (*e*). All such parts are to be regarded as part of the hereditament "whenever and only to such extent as any such part is, or is in the nature of, a building or structure."

In *Cardiff Rating Authority* v. *Guest, Keen and Baldwins Iron and Steel Co., Ltd.* [1949] 1 K.B. 385, the Court of Appeal had to consider whether certain tilting furnaces, gas mains and hot and cold blast mains which formed part of an iron and steel works were within Class 4 of the Order. In the course of his judgment Denning L.J. said (*h*): "A structure is something which is constructed, but not everything which is constructed is a structure. A ship, for instance, is constructed, but it is not a structure. A structure is something of substantial size which is built up from component parts and intended to remain permanently on a permanent foundation, but it is still a structure even though some of its parts may be movable, as, for instance, about a pivot. A thing which is not permanently in one place is not a structure, but it may be 'in the nature of a structure' if it has a permanent site and has all the qualities of a structure, save that it is on occasion moved on or from its site. . . . A transporter gantry is 'in the nature of a structure' even though it is moved along its site. It has all the same qualities as a fixed gantry, save that it moves on its site." Jenkins J., although of opinion that it was impossible to achieve any exhaustive definition of what is meant by the words "a building or structure or in the nature of a building or structure," also indicated that in his view matters of size, physical attachment and mobility were relevant considerations (*i*). In the event the court held that the furnaces and mains in question fell within Class 4 and were, therefore, to be deemed to be part of the hereditament (*k*).

(*h*) At p. 396.

(*i*) At p. 402.

(*k*) Other decisions concerned with this Order are factually too complex for summary in this Article. See *Union Cold Storage Co., Ltd.* v. *Southwark Assessment Committee* (1932) 16 R. & I.T. 160; *South Aluminium Co., Ltd.* v. *Neath Assessment Committee* [1943] 2 All E.R. 587; *Richard Thomas & Co., Ltd* v. *Monmouth Assessment Committee* [1943] 2 All E.R. 707; [1944] 1 All E.R. 417.

Rent attributable to rateable plant and machinery

It is common practice to assess the rent attributable to plant and machinery which is deemed to form part of the hereditament, by taking a percentage upon its capital value. This percentage is then added to the estimated rent for the bare hereditament, thus giving an annual value to the whole rateable entity. It is not, however, necessary as a matter of law to employ this method of valuation. If sufficient evidence were available of the rent which the land, buildings, rateable plant and machinery would together command, it would be unnecessary to have resort to any other method of valuation.

Where, however, it is necessary to take a percentage upon capital value, it does not follow that the capital value to be taken is the " written-down " value of the plant and machinery. From the point of view of the yearly tenant, so long as the plant and machinery have not become obsolete or more expensive to operate by reason of age, their age is a matter of indifference to him. So long as the plant and machinery can be expected to function efficiently for the duration of his term, it does not matter to the tenant whether they are new, or five, or ten years old. Fundamentally therefore it is right to base the percentage upon the present capital value of the plant and machinery as if new, making any necessary adjustments for obsolescence or increased working costs.

(2) The Valuation for Rating Act, 1953

The gross values of dwelling-houses in the current valuation lists have been calculated in accordance with the normal principles contained in the Rating and Valuation Act, 1925, or in the Valuation (Metropolis) Act, 1869. For some years, however, the gross values of dwelling-houses, particularly of the smaller type, appearing in the valuation lists have been appreciably below the rents which they could be expected to command in a free market, because it has been felt that to do otherwise would impose an unfair burden upon their occupiers. The inflation and housing shortage resulting from the Second World War coupled with the postponement of new valuation lists have increased this disparity between current gross values and free-market rents, to the point where rating practice has ceased to be wholly in accordance with the provisions of the Acts of 1925 and 1869 (*l*).

(*l*) In practice the full rigour of the principle of *Ladies Hosiery & Underwear Ltd.* v. *West Middlesex Assessment Committee* [1932] 2 K.B. 679, that each hereditament is to be separately assessed and that correctness must not be sacrificed to uniformity, has been avoided by the acceptance of the view that actual

An attempt to solve this problem was made by Part IV of the Local Government Act, 1948, which provided an exceptional method of valuation for dwelling-houses by reference to the hypothetical cost of their site and construction in 1938. No valuation lists have, however, ever been prepared in accordance with this method, which has now been abolished by section 1 of the Valuation for Rating Act, 1953, which repeals the whole of Part IV of the Act of 1948 with exceptions of sections 83 and 84. The Act of 1953 itself provides a novel method of calculating the gross values of the hereditaments to which it applies and enacts that the first valuation lists to be made after the passing of the Act (*m*) shall be made in accordance with this method (*n*). The method involves a return to the concept of annual rental value, but provides for the calculation of gross values by reference to 1939 rents.

Hereditaments within the Act

The Act applies to hereditaments (*o*) which are dwelling-houses or private garages or private storage premises, as defined by the Act, and also to certain hereditaments consisting partly of premises used wholly as private dwellings and partly of premises used for other purposes (*p*).

(i) *Dwelling-house*

The expression " dwelling-house " is defined to mean a hereditament which is used wholly for the purposes of a private dwelling or private dwellings (*q*). A hereditament does not, however, cease to be used wholly for such purposes merely because it includes " a garage, outhouse, garden, yard, court, forecourt or other appurtenance which is not used, or not used wholly for the purposes of a private dwelling " (*r*). Nor does a hereditament cease to qualify as a dwelling-house because some part of the hereditament, other than those just mentioned, is used " partly for the purposes of a private dwelling or private dwellings and partly for other purposes, unless that part was constructed or has been adapted, for those

post-war rents represent rents which might be paid by desperate persons in conditions of extreme necessity and so do not represent the rent which the hypothetical tenant would pay.

(*m*) The Act came into force on July 31, 1953.

(*n*) The Act does not make any provision with regard to subsequent valuation lists, a fact which suggests that the new method of valuation may only tentatively be regarded as a solution.

(*o*) The term " hereditament " has the same meaning both within and without the county of London as that contained in s. 68 of the Rating and Valuation Act, 1925: s. 8 (2) of the Act of 1953.

(*p*) s. 2 (1); s. 4 (1).

(*q*) s. 3 (1).

(*r*) s. 3 (4) (a).

other purposes" (*s*). If these words refer, as it is submitted they do, to a mixed use extending to the entire part of the hereditament in question, and not to use as a private dwelling in one portion of the part and to some other use in the other portion involving no physical overlap of uses, then it would appear that where a doctor uses a room in his house as a consulting room during surgery hours, but as a living room at other times, the whole house ranks as a "dwelling-house." If, however, he sets aside one room in the house for use solely as a consulting room, his house is not a dwelling-house within the meaning of the Act (*t*). Moreover, it would seem likely that where a dentist uses one room in his house as a surgery, the whole ceases to be a "dwelling-house," even if he also uses it as a living room, because the fixing of the dentist's chair to the floor and the setting up of the drill involves adapting the hereditament to other purposes.

The term "private dwelling" is not defined by the Act, but it does expressly provide that a hereditament shall not fail to qualify as a dwelling-house merely because its occupant, or the occupant of a part of it, resides there in consequence of his employment or office (*u*).

One house may comprise a number of private dwellings, either because the paramount control of the house remains vested in the owner or tenant of the whole, or because the valuation officer in the exercise of his discretion under section 57 of the Local Government Act, 1948, has decided not to treat the parts as separate hereditaments, but to treat the whole house as one hereditament in the occupation of the recipient of the rents of the parts (*a*). It is for this reason that the definition of "dwelling-house" refers to use both as a private dwelling and as private dwellings. The Act does, however, provide an important exception, which is as follows: Where the whole or substantially the whole of such accommodation in a hereditament as is suitable for being used for the letting of rooms singly for residential purposes is so used, the hereditament is not to be regarded as used for the purpose of a private dwelling or dwellings (*b*). For this purpose it is immaterial whether the rooms are let by way of tenancy or licence, or with or without board or other services or facilities (*c*). It would appear from the above that halls, passages, bathrooms, toilets and, usually,

(*s*) s. 3 (4) (b).
(*t*) It will, however, fall to be valued under s. 4, *infra*, p. 484.
(*u*) *e.g.*, a caretaker's lodge: s. 3 (5).
(*a*) *Ante*, p. 67.
(*b*) s. 3 (2).
(*c*) s. 3 (6).

kitchens are not to be regarded as accommodation available for single lettings, for although they are used for residential purposes, they are not suitable for being let singly. Moreover, if a living room is let together with a bathroom or other non-living room, the exception does not apply so far as such letting is concerned, because it is a letting of two rooms and not the letting of a single room. On the other hand, if the tenant or lodger of a single room enjoys the right to use the bathroom in common with other occupants of the house, the letting is still within the exception.

It does not follow that because a hereditament is not excluded from the class of "dwelling-houses" by the above exception, it will necessarily qualify as a dwelling-house. The question will remain whether the hereditament is or is not "used wholly for the purposes of a private dwelling or private dwellings." Thus for example a private hotel comprising suites of two rooms each would not be within the above exceptions, but would nevertheless not be regarded as a dwelling-house (*d*).

Finally it should be noted that a hereditament is not to be regarded as used for the purposes of a private dwelling or dwellings if it consists wholly or mainly of land used as the sites of "movable dwellings" as defined by section 269 of the Public Health Act, 1936 (*e*).

(ii) *Private garage*

A private garage for the purposes of the Act is a hereditament having a floor space of not more than two hundred and forty square feet which is used as a lock-up garage, so long as

(a) it does not form part of premises in which a business of providing services for motor-vehicles is carried on;

(b) it is not provided by the keeper of a hotel, inn, guest-house or boarding house and used wholly or mainly for the motor-vehicles of his guests;

(c) it is not used as a garage for a motor-vehicle chargeable with duty under sections 3, 4 or 5 of the Vehicles (Excise) Act, 1949 (*i.e.*, hackney carriages, tractors and goods vehicles), whether it is also used for any other vehicle or not (*f*).

The majority of domestic garages will not be rated separately,

(*d*) See s. 4 (4) on this point.

(*e*) s. 3 (4). S. 269 (8) of the Public Health Act, 1936, defines "movable dwelling" as including "any tent, any van or other conveyance whether on wheels or not, and, subject as hereinafter provided, any shed or similar structure which is used either regularly or at certain seasons only or intermittently for human habitation: provided that it does not include a structure to which the building by-laws of the local authority apply."

(*f*) s. 3 (1).

but will form part of a "dwelling-house" (*g*) with the result that the number of garages falling to be rated as "private garages" under this Act will be small in comparison with the total number of garages that exist. The term "lock-up garage" is not defined by the Act. It seems unlikely that the term is to be construed to refer only to those garages which are in fact locked up, but that it is intended to include any garage which is "self-contained" and capable of being locked up.

(iii) *Private storage premises*

A hereditament which is used wholly in connection with a dwelling-house or dwelling-houses for the storage or accommodation of household stores, articles of domestic use and light vehicles such as bicycles, tricycles and perambulators (*h*) belonging to the occupants of the dwelling-house or houses, is to be regarded as "private storage premises" for the purposes of the Act (*i*). It should be noted that this definition incorporates the definition of "dwelling-house," so that if for any reason the hereditament with which the storage premises are used fails to qualify as a "dwelling-house," the storage premises will necessarily fail to qualify as "private storage premises." This definition is, of course, only applicable where the storage premises constitute a separate hereditament. In the majority of cases storage premises will consist of outhouses and sheds and will form part of the "dwelling-house" itself (*k*).

Method of valuation

Section 2 of the Act of 1953 provides that the gross value of a hereditament which falls into one of the above three categories is to be taken as the lesser of the following two amounts (*l*):

(a) the gross value of the hereditament calculated in accordance with section 68 of the Rating and Valuation Act, 1925, or section 4 of the Valuation (Metropolis) Act, 1869, as appropriate; and

(b) the rent at which the hereditament might reasonably have been expected on or about June 30, 1939, to let from year to year if the tenant had undertaken to pay the usual tenant's rates and taxes and if the landlord had undertaken to bear the cost of the repairs and insurance, and

(*g*) s. 3 (4) (a) and *ante*, p. 479.
(*h*) Whether mechanically propelled or not.
(*i*) s. 3 (1).
(*k*) See s. 3 (4) (a).
(*l*) The Act does not affect the adjustment of gross values to rateable values. See s. 83 of the Local Government Act, 1948.

other expenses, if any, necessary to maintain the hereditament in a state to command that rent (*m*).

For the purposes of the second calculation it is to be assumed that the hereditament subsisted on or about June 30, 1939, in the same state as that in which it actually subsists at the time of valuation, and that the locality in which the hereditament is situated was then in the same state, so far as other premises, their use and occupation and so far as transport services and other facilities are concerned, as it is in fact at the time of valuation. Where, however, there has been since June 30, 1939, an increase in the number of persons using other premises in the locality, such increase is to be taken into account only in so far as it has affected the amenities of the locality or of the hereditament to be valued (*n*). Thus no account is to be taken of the effect which such an increase of population might be expected to have in creating a shortage of housing accommodation and so increasing rental values.

Indeed the intention of the Act appears to be to provide a method of valuation which excludes the influence of scarcity as a factor enhancing rents. Thus it is expressly provided by section 2 (5) that where in calculating the gross value of a dwelling-house (*o*) by reference to the rents obtaining on or about June 30, 1939, it becomes apparent that the rent of the hereditament will be unduly high or unduly low, in relation to the rents which prevailed for other kinds of dwelling accommodation in the locality or in neighbouring localities, by reason of one or both of the following matters :

(a) the effect at that time of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1938, in relation to any other dwelling accommodation (*p*),

(b) the existence at that time in the locality of a marked scarcity or abundance of dwelling accommodation generally, or of any particular kind,

then the effect of these matters is to be disregarded, and the rent is to be calculated as if on or about June 30, 1939, all the accommodation in the locality of a kind comparable with the dwelling-house which is to be valued had been due to become available shortly for letting free of any restrictions (*q*) imposed by the Rent Restriction Acts, and as if there was no marked deficiency or excess in

(*m*) s. 2 (1) and s. 2 (2).

(*n*) s. 2 (4).

(*o*) Note this provision does not apply to either " private garages " or " private storage premises."

(*p*) These Acts cannot, of course, directly determine the gross value of the hereditament in question: see *Poplar Assessment Committee* v. *Roberts* [1922] 2 A.C. 93, discussed *ante*, p. 288.

(*q*) Whether on rent or on the recovery of possession: s. 2 (5).

the amount of such accommodation as compared with the number of acceptable persons competing for the tenancies thereof.

It will be seen from the above that the Valuation for Rating Act, 1953, postulates a highly artificial method of valuation, particularly in relation to dwelling-houses. Broadly speaking it requires that gross values shall be determined by applying a 1939 standard to present facts. This requirement is one step from reality and is bound to create certain difficulties, but in relation to dwelling-houses the Act requires that a further step be taken, namely, that the 1939 standard shall not be an actual standard, but a notional standard reflective of the rare situation in which demand is matched by supply. Moreover, since no attempt is made by the Act to define such terms as "the time of valuation," "the locality," "unduly high or unduly low," there is bound to be room for considerable differences of expert opinion and difficulties of law. It remains to be seen how well the Act will achieve its object of providing a just and uniform method of valuation.

Valuation of hereditaments partly used as private dwellings

Where a hereditament consists partly of premises which are used wholly for the purposes of a private dwelling or dwellings and partly of premises not so used, section 4 of the Act requires that the following calculations shall be made:

(1) The gross value of the hereditament is to be calculated in accordance with the Rating and Valuation Act, 1925, or the Valuation (Metropolis) Act, 1869, whichever is appropriate. This value is known as "the unreduced gross value."

(2) A calculation is to be made of the proportion of the unreduced gross value attributable to the premises which are used wholly for the purposes of a private dwelling or dwellings.

If this proportion is less than one-tenth of the total unreduced gross value, then no further calculation is required. Such a hereditament is to be valued without reference to the Act of 1953, *i.e.*, the unreduced gross value of the hereditament is the true gross value (*r*).

(*r*) Where premises are used partly for a private dwelling and partly for some other purpose and are treated by the valuation officer as one hereditament under s. 57 of the Local Government Act, 1948, then, if less than one-tenth of the unreduced gross value is attributable to the private-dwelling use, the hereditament will be deprived of the benefit of the Act, whereas had the valuation officer exercised his discretion differently the part in private-dwelling use would have been entitled to be included as a "dwelling-house" under s. 2 of the Act.

(3) If, however, the proportion is one-tenth or more, then the gross value of the premises in private dwelling use is to be calculated as if they were a dwelling-house (*i.e.*, in accordance with the 1939 standard and on the assumptions above described).

If the resultant figure is less than the proportion of the unreduced gross value attributable to those premises, then the gross value of the whole hereditament is the amount of the unreduced gross value less the difference between the resultant figure and the proportion (*s*).

The following examples should help to make the provision clear :

Example 1

Unreduced Gross Value (U.G.V.) of Hereditament = £100
Proportion of U.G.V. attributable to premises in private dwelling use = £5
$\therefore \frac{5}{100} = \frac{1}{20}$ *i.e.* less than $\frac{1}{10}$
$\therefore$ Gross Value = U.G.V. = £100

Example 2

U.G.V. of Hereditament = £100
Proportion of U.G.V. attributable = £15
$\therefore \frac{15}{100} = \frac{3}{20}$ *i.e.* more than $\frac{1}{10}$

Gross Value of premises in private dwelling use calculated in accordance with section 2 of the Act of 1953 = £20
$\therefore$ £15 − £20 = − £5
$\therefore$ No reduction
$\therefore$ Gross value = U.G.V. = £100

Example 3

U.G.V. of Hereditament = £100
Proportion of U.G.V. attributable = £15
Gross Value of premises in private dwelling use calculated in accordance with section 2 = £10
$\therefore$ £15 − £10 = £5
$\therefore$ Gross Value = (£100 − £5) = £95

Section 4 of the Act has, however, no application to any of the following hereditaments (*t*) :

(*s*) s. 4.
(*t*) s. 4 (4).

(a) any hereditament consisting of or comprising premises licensed for the sale of intoxicating liquors to be consumed on the premises (*i.e.*, public houses);

(b) any hereditament which is not within the description "houses and buildings without land other than gardens" (*u*);

(c) any industrial or freight transport hereditament (*a*);

(d) any hereditament where the premises not in private dwelling use are used for the purposes of a hotel, inn, guest-house or boarding house, or for the letting of rooms singly for residential purposes.

Additional services of the landlord

Section 6 of the Act provides that where in ascertaining the gross value of a dwelling-house, private garage or private storage premises regard is had to the rent payable under an actual tenancy by the terms of which the landlord provides any services other than the payment of the cost of repairs or insurance or of other expenses necessary to maintain the hereditament in a state to command that rent, then no allowance shall be made for landlord's profit in adjusting that actual rent to the rent which the hypothetical tenant would be willing to pay. This section effects a reversal of the decision in *Bell Property Trust, Ltd.* v. *Hampstead Assessment Committee* [1940] 2 K.B. 543 upon this point (*b*). Moreover, this disregard of landlord's profit is applicable to the calculation of the gross values of dwelling-houses, private garages and private storage premises whether calculated in accordance with section 2 of the Act of 1953, section 68 of the Act of 1925 or section 4 of the Act of 1869. Where in future section 68 of the Act of 1925 is applicable to such hereditaments, the proviso to the definition of "gross value" therein (which provides that no account shall be taken of landlord's services other than those of repair and maintenance), is to be treated as omitted. The effect of these provisions is to procure uniformity of valuation in this respect both within and without the county of London (*c*).

(*u*) See Rating and Valuation Act, 1925, Second Schedule, Part I: *ante*, p. 281.

(*a*) See Rating and Valuation (Apportionment) Act, 1925: *ante*, pp. 399 *et seq.*

(*b*) *Ante*, p. 292.

(*c*) s. 6 does not apply to any valuation list in force on July 31, 1953, the date of the passing of the Act, see proviso to s. 6 (3).

(3) Agricultural Dwellings

As has already been stated (*ante*, p. 169) " agricultural lands and buildings " as defined by section 2 (2) of the Rating and Valuation (Apportionment) Act, 1928, are wholly exempt from rating.

Dwelling-houses are expressly excluded from the definition of " agricultural buildings," with the result that they are rateable. Section 72 of the Local Government Act, 1929, however, lays down a special rule for the valuation of any " house occupied in connection with agricultural land (*d*) and used as a dwelling-house of a person who—

(a) is primarily engaged in carrying on or directing agricultural operations on that land; or

(b) is employed in agricultural operations on that land in the service of the occupier thereof and is entitled, whether as tenant or otherwise, so to use the house only while so employed . . .

so long as the house is so occupied and used. . . ." The rule is that the gross value of such houses are to be estimated by reference to the rents at which the houses might be expected to let if they could only be so occupied and used. Subject to this rule, however, the gross value is to be calculated by reference to the Rating and Valuation Act, 1925, or to the Valuation (Metropolis) Act, 1869, as appropriate.

For the future, it is provided by section 5 of the Valuation for Rating Act, 1953, that when the next valuation lists come to be made, dwelling-houses (*e*) which satisfy the same requirements as those specified by section 72 of the Act of 1929 shall be valued in accordance with section 2 of the Act of 1953, but as if the hypothetical tenant had undertaken not to occupy or use the dwelling-house in any other way (*f*).

(4) Woodlands

It has already been stated (*ante*, p. 171) that the only woodlands which are still rateable are those which form part of " land occupied together with a house as a park " (*g*) or which are " kept

(*d*) As defined by s. 2 (2) of the Rating and Valuation (Apportionment) Act, 1928: see *ante*, p. 169.

(*e*) As defined by s. 3 of the Act: *ante*, p. 479.

(*f*) The definitions of " gross value " in the Acts of 1925 and 1869 have been adjusted so as to include a similar undertaking for the purposes of applying s. 4 (hereditaments partly used as dwelling-houses) of the Act of 1953: s. 5 (2). So also s. 72 of the Act of 1929 is preserved for the purposes of the proviso to s. 2 (1) of the Act of 1953: s. 5 (3).

(*g*) s. 2 (2) of the Rating and Valuation (Apportionment) Act, 1928.

or preserved mainly or exclusively for purposes of sport or recreation" (*g*). Such woodlands are to be valued in accordance with section 4 of the Rating Act, 1874, which lays down the following three rules:

(a) If the land is used only for a plantation or wood, the land shall be valued as if instead of being a plantation or wood it were let in its natural and unimproved state (*h*).

(b) If the land is used for the growth of saleable underwood the land shall be valued as if so let.

(c) If the land is used for both purposes (a) and (b) the land shall be valued as if used only for whichever of the purposes the assessment committee may determine.

(5) Public Houses

The valuation for rating of public houses presents certain problems peculiar to such hereditaments. It has already been noted (*ante*, p. 288) that the annual value of a public house whose licensee is bound by covenant to buy his beers from a particular brewer is to be calculated without reference to such tie (*i*). The rent paid by a tied tenant is artificially reduced by the special covenant between him and his landlord, and cannot represent the rent which the hypothetical tenant would offer.

The existence of the licence itself is, however, to be taken into account, because it affects the rent which the hypothetical tenant would be willing to pay (*k*). Although the licence is granted to the publican personally, it is granted to him in respect of the public house which he occupies. The number of public houses in any locality is carefully restricted by the licensing justices, with the result that the intending publican's choice of premises is limited to those premises to which a licence is, in practice, "attached." The rent of such premises tends therefore to be enhanced by the fact that only at such premises can the trade of publican be carried on.

For similar reasons it is necessary to have regard to the amount which has to be paid as duty in order to obtain the licence, though this is a factor tending to reduce the annual value. "Inasmuch . . . as licensed houses are undoubtedly valued at an increased

(*h*) The expression "natural and unimproved state" is difficult to apply to a plantation or wood which has been altogether artificially planted.

(*i*) *Overseers of Sunderland* v. *Sunderland Union* (1865) 34 L.J.M.C. 121; *R.* v. *Shoreditch Assessment Committee* [1910] 2 K.B. 859, 883. In the earlier case of *Allison* v. *Monkwearmouth Shore Overseers* (1854) 4 E. & B. 13, 25, the contrary views had been taken.

(*k*) *R.* v. *Bradford* (1815) 4 M. & S. 317; *Cartwright* v. *Sculcoates Union* [1900] A.C. 150.

value, beyond that which they would have if no licence were attached to them, . . . it is impossible to say that the amount of the licence duty, which the tenant has to pay for permission to carry on that particular trade on the premises, is not an element to be taken into consideration in ascertaining the annual value of the premises " (*l*).

Payments for monopoly value which a licensee may be required to pay on the grant of a new on-licence either as a capital sum or by instalments (*m*) are not, however, to be regarded as reducing the rent which the hypothetical tenant would pay (*n*). Such payments have to be made in order to obtain the licence, which is an essential part of the " equipment " of the public house. Accordingly the payments are to be regarded as part of the capital cost of rendering the premises suitable for their purpose and not as a tenant's charge.

Goodwill

The price paid on the sale of a business is frequently said to include something for the goodwill, in cases where the premises have in the past been used for the conduct of a business of the type which the purchaser intends to conduct there. So also rent is sometimes enhanced by similar considerations. The term " goodwill " is used in various senses and is incapable of exact definition, but in so far as it tends to increase the rent which a tenant is willing to pay, it is a factor to be considered in making a rating valuation.

This factor of goodwill affects the rents of public houses as of other business premises. The prospective tenant will pay a greater rent for a public house where a thriving trade has been carried on than he will for similar premises, similarly situated where only a poor trade has been done. He will do so because he anticipates that the customers of the first public house will continue to patronise it even after the change of licensee. If, however, the prospective tenant were to be of opinion that the thriving trade of the house was dependent solely upon the personality of the landlord, he would not pay any additional rent, because the goodwill would be personal to the existing landlord and would be lost on his departure. It is only in so far as the prospective tenant contemplates that the goodwill of the present business will " adhere " to

(*l*) *Per* Channel J., *R.* v. *Shoreditch Assessment Committee* [1910] 2 K.B. 866, 868.
(*m*) Finance Act, 1910, ss. 14 and 17.
(*n*) *Appenrodt* v. *Central Middlesex Assessment Committee* [1937] 2 K.B. 48.

the premises and help to boost his own trade that he is prepared to pay a higher rent (*o*).

Evidence of value

The annual value of public houses is commonly determined with reference to the actual trade done. It is now established that evidence of trade receipts, of profits or barrelage are admissible. Prior to the decision in *Cartwright* v. *Sculcoates Union* [1900] A.C. 150, the decision of *Dodds* v. *South Shields* [1895] 2 Q.B. 135 appeared to be authority for the proposition that such evidence was only admissible where the hereditament was of an exceptional or commercially unique character (*p*). In *Sculcoates* case, however, the House of Lords repudiated the distinction between ordinary and exceptional cases. Lord Davey said (*q*) : " . . . Where the premises in question are premises of a character which have what may be described as a market price . . . then you do not want to go into the trade done on the premises . . . and in that case it is an exceedingly convenient rule of practice that you should not allow questions of an inquisitorial character to be addressed to the occupier of the premises unnecessarily. . . . You have in each case to find out in the best way you can what is the rent which a tenant may reasonably be expected to give, and if the best way under the particular circumstances is to ascertain the use which a tenant might expect to be able to make of the premises, the facility afforded by the premises for the carrying on of a trade appears to me to be a primary and elementary consideration in the case. If you are to take into account the fact that the premises command a trade, you must surely ask what trade. Is it a large trade, or a small trade? And I do not know myself any better test of what trade they may be expected to command than the trade which they actually do command." Once again, however, it is necessary to consider, when evidence of the amount of trade is tendered, how far that trade is attributable to the premises and their situation, and how far to the quality of beer sold or to other factors. Only in so far as it is attributable to the premises and their situation can it be expected to affect the rent which the premises will command, and only thus far therefore is trade good evidence of value for rating purposes.

(*o*) The problem is very similar to that which arose under s. 4 of the Landlord and Tenant Act, 1927.

(*p*) *Ante*, p. 296.

(*q*) At p. 157.

Although it is clearly established that evidence of trade is admissible, it is also accepted that it is not compellable (*r*).

Finally it should be noted that the decision in *Robinson Brothers (Brewers), Ltd.* v. *Durham County Assessment Committee* [1938] A.C. 321, established that in calculating the annual value of a public house it is proper to consider not only the competition of brewers but also the rent which they would be prepared to offer. "The brewer who wishes the premises because he thinks he can make money by subletting them to a tied tenant is influenced by perfectly legitimate business considerations: he offers the rent which he thinks it worth his while to obtain the tenancy. Why should the rent which he is prepared to pay be excluded from consideration in fixing the market value of the tenancy? He is one of the competitors in the market, and the figure which he is prepared to pay is an element which ought clearly to be taken into account in arriving at the market price" (*s*). Prior to the decision in *Robinson's* case, the rule had been that stated in *Bradford-on-Avon Union* v. *White* [1898] 2 Q.B. 630, namely, that whilst it was permissible to consider the competition of brewers generally, it was not permissible to have regard to the actual rents which they would offer.

In view of this decision, it would appear that it is legitimate for brewers who have installed a manager in a public house to tender evidence of their profits in the same way as an independent publican is entitled to do.

(*r*) *Smith* v. *West Ham Union* (1910) Konstam and Ward 15 (a decision of quarter sessions).
(*s*) *Per* Lord Macmillan, at p. 336.

(To be concluded)

ESTATE DUTY PROVISIONS OF THE FINANCE ACT, 1954

A Commentary

By Desmond Miller, *Barrister-at-Law*

These provisions are contained in sections 28 to 33 inclusive and the Sixth Schedule to the Act, and they are to be construed as one with Part I of the Finance Act, 1894.

It is pleasant to record that these sections are largely remedial and principally relate to difficulties or inequities which have arisen in connection with the assets valuation required by section 55 of the Finance Act, 1940. In the result the application of this section is undoubtedly circumscribed and the manner and method by which it is circumscribed will be seen in the following pages. However, it is necessary to stress that the application of the sections material to this purpose, that is to say of sections 28, 29 and 30, are to a considerable extent dependent for their operation upon the provisions of the interpretation section, section 31. This latter section, while of vital importance, is not one which presents, or rather appears to present, any prime difficulty in construction. Indeed the only uncertainty in its terms arises from the somewhat curious provisions of subsection (3) (c) which empower the Commissioners of Inland Revenue to disregard any " limited interest " in determining where control, or where beneficial interests lie, both questions upon which an asset valuation will hinge. There is no attempt to define or delimit this power and no right of appeal from its exercise.

This provision is clearly objectionable, as is the succeeding provision which enables the Commissioners to direct that voting rights exercisable by virtue of preference shares are to be disregarded, although it is true in this latter case that the Commissioners must be satisfied that such voting rights, " do not materially affect the effective control of the Company's affairs."

In addition to the foregoing there is the raising of the exemption limit from £2,000 to £3,000 and a reduction in the rates of duty from 2 per cent. to 1 per cent. in the case of estates valued at £3,000 to £4,000. There is important provision dealing with aggregation in the case of policies of assurance in which the deceased never had an interest (largely nominated policies) and less important, extension of the relief granted by section 16 (3) of the

Finance Act, 1894, by an increase in the value of the free estate which is excepted from aggregation with settled property passing at death.

As is the normal practice the foregoing provisions will apply in the case of deaths occurring after the date of the Act, which is July 30, 1954.

Reduced Rate of Duty on Certain Business Assets (Section 28)

The section is a relieving measure designed to mitigate the impact of the present high rates of duty which affect or may affect businesses, whether individually owned, or controlled through the medium of companies within the scope of Part IV of the Finance Act, 1940. The relief is given by the same means as the agricultural relief, that is to say the property or assets in question are charged at the normal rates, but subject to a reduction of 45 per cent. in such rates.

The circumstances in which the relief will operate are twofold. First, where the business, or an interest in that business passes on the death, and second, where shares in or debentures of a company whose assets fall to be valued in accordance with section 55 of the Finance Act, 1940, pass on that death. In either case, where duty is chargeable *in respect of industrial hereditaments used in and occupied for the purposes of the business or in respect of machinery or plant so used*, the relief indicated is to be given, where the business is carried on by an individual or individuals, in effect by reducing the duty on these assets by 45 per cent., where carried on by a body corporate, by reducing the duty chargeable on the shares or debentures of such company by the same percentage on such part of their value as is attributable to these assets.

The foregoing sets out the broad purpose and effect of the enactment, but there are, of course, the following qualifications or restrictions on the scope of the relief, *viz.* :—

(i) *Business.* There must obviously be a business, and moreover a business which is carried on for gain; the latter qualification needs no explanation, but the term business itself is not defined; it is, however, a word of wide connotation and of no technical significance—compare Rowlatt J. in *C. I. R.* v. *The Marine Steam Turbine Co., Ltd.* (1920) 1 K.B. 193.

By express provision (of subsection (9)) a business is not, for the purpose of this relief, to include one carried on in, " the exercise of a profession or vocation." Neither of these latter terms is defined, and in any event both must

raise issues of fact. Turning to the Income Tax Acts and in particular to the charging provisions of Schedule D—*cf.* section 122, the Income Tax Act, 1952—the same words, that is to say "profession and vocation," there appear, and in relation to the latter, the courts have held—*cf.* *Partridge* v. *Malandaine*, 2 T.C. 179, *per* Denman J. at p. 180 *ibid.*:

> "the word 'vocation' is a still stronger word, it is admitted to be analogous to the word 'calling'" which is a very large word; it means the way in which a person passes his life, and it is a very large word indeed."

Pausing for a moment, it will be noted that so far as individually owned businesses are concerned, it would obviously be possible so to construe the provisions of the subsection now under consideration as seriously to impair and limit the scope of the relief which the legislature apparently intends should be given.

As to the word "profession," this has frequently come before the courts in the context of the Acts charging a duty upon excess profits, and in such a context the observations of Scrutton L.J. in *C. I. R.* v. *Maxse* [1919] 1 K.B. 647 at p. 657, *ibid.*, may be of assistance, *viz.*:

> "The next question is—what is a profession? I am very reluctant finally to propound a comprehensive definition. A set of facts, not present to the mind of the judicial propounder and not raised in the case before him, may immediately arise to confound his proposition, but it seems to me, as at present advised, that profession, in the present use of language, involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled as in painting or sculpture, or surgery, by the intellectual skill of the operator."

To summarise the position, therefore, the issues of fact which arise are fourfold. First, is there a business carried on? Second, is it carried on for gain? Third, is it carried on in the course of a profession, and/or fourth, of a vocation?

(ii) *Exclusion of exemption.* The relief is not to extend to a business which is subject to a contract of sale at the death in question with exception where the sale is to a company formed for the purpose of carrying on the business *and* the

consideration consists wholly or mainly of shares in the company; nor will it be granted where a resolution has been passed or an order made for winding up, unless with a view to reconstruction or amalgamation. In addition, in the case of a business owned by an individual, or individuals in partnership, the relief cannot be granted unless the business was carried on personally by the deceased.

(iii) *Industrial hereditaments and machinery or plant.* An industrial hereditament is to be treated as such for the purposes of this relief if it is so treated for the purposes of valuation for rating (or would be so treated if situate in England)—*cf.* section 3, the Rating and Valuation (Apportionment) Act, 1928.

The words " machinery or plant " are not defined, but it is reasonable to assume that they will be given the same interpretation as is the like expression in the Income Tax Acts—*cf. Daphne* v. *Shaw*, 43 T.L.R. 45; 11 T.C. 256, *per* Rowlatt J. at p. 258 (of the Tax Case) :—

> " It is impossible to define what is meant by plant and machinery. It conjures up before the mind something clear in the outline at any rate; it means apparatus, alive or dead, stationary or movable, to achieve the operations which a person wants to achieve in his vocation."

(iv) *Apportionment.* In the case of machinery or plant not used exclusively in the business, the relief is to be restricted to such figure as appears to the Inland Revenue " to be just and reasonable," but the Commissioners are directed to have particular regard, in making this apportionment, to the extent of the non-business user.

In the case of industrial hereditaments, where the land or premises in question are used partly for industrial purposes and partly for other purposes, the section directs an apportionment between those purposes and restricts the relief to the industrial user. For this purpose, the method of apportionment of value provided by the Rating and Valuation (Apportionment) Act, 1928, s. 4 (2) (b), is incorporated, by express reference.

It will be noted that, in the case of an assets valuation of shares or debentures passing on the death, the relief or reduction in rate is limited to the " relevant proportion " of the value of those shares

or debentures. This phrase is a term of art and, for the purposes of the section, is to be given the following meanings, *viz.* :—

(i) such proportion of the net value of the shares or debentures as is attributable to the value of the industrial hereditaments and/or machinery or plant, as the case may be; and

(ii) where the assets of the company in question include shares in or debentures of a subsidiary company, such proportion of the net value of the subsidiary's shares or debentures as is attributable to industrial hereditaments and/or machinery or plant, whether used in the subsidiary's business or let by subsidiary to principal (subsidiary as defined by section 154 of the Companies Act, 1948); and

(iii) where the industrial hereditaments and/or machinery or plant are let by principal to subsidiary and are used in the subsidiary's business, such part of the share value of the principal as is properly attributable to its interest, as lessor. (Section 31 (5) of the Act provides the formula which determines what part of the value of any shares or debentures of a company is attributable to the value of its assets.)

Specific provision is also made for the case where the industrial hereditaments and/or plant or machinery are personally owned by the deceased and are let by him to the company whose shares pass at his death, being subject to an assets valuation under section 55, *supra*. In such event, no relief or effective relief under the foregoing provisions would be available, as the company's interest in the business assets in question would, or at least might, be negligible. Relief is therefore given on the footing that the industrial hereditaments and/or plant or machinery were used in or occupied for the purposes of a business carried on by the deceased.

Finally, an obvious injustice is remedied by extending the agricultural relief to cases of an assets valuation under section 55. Thus, where the company in question is engaged in husbandry or forestry *and* the agricultural property in question is occupied by it solely for these purposes, the value of the shares or debentures passing on death is to be reduced by 45 per cent. on such proportion of their value as is attributable to the agricultural value of the property so occupied. There is provision for apportionment where the occupation is in part only for the purposes of husbandry and forestry.

Amendments Restricting Finance Act, 1940, s. 55, where deceased did not have Voting Control of company (Section 29)

Section 55 of the Finance Act, 1940, requires an assets valuation where the deceased, on whose death the shares or debentures in question pass or are deemed to pass, possessed the degree of control over or financial interest in the company specified by the section. For this purpose the section laid down three tests which came to be known as the " controlling interest," the " dividends and interest " and the " nominal capital " test.

The effect of the present provisions is to limit the scope of section 55 and this it does in the first instance by abolishing the dividend and interest test and the nominal capital test, and, in addition, by narrowing the circumstances in which an individual had, or is to be deemed to have had, control of the company.

In the result, therefore, in so far as deaths occurring after July 30, 1954, are concerned, the questions arising on the amended form of section 55 of the Finance Act, 1940, will be, first, did the shares and/or debentures pass or are they to be deemed to pass at death? And second, if the answer is affirmative, did the deceased have control of the company within the period of five years ending with his death; control for this purpose being defined by the provisions of subsection (3) of section 55, *supra*, as now amended. If there exist the passing and the control, then there will be an assets valuation. However, even if such degree of control does not exist valuation by reference to the underlying assets may nevertheless be required in the circumstances specified by the present section. Thus subsections (2), (3) and (4) (of section 29) in fact resurrect the repealed definition of control (as originally contained in subsection (3) (b) of section 55), the dividends and interest test (applied by subsection (1) (b) of section 55) and the nominal capital test (applied by subsection (1) (c) of section 55)—in this latter instance with some slight amendment—*but no one of these tests will produce an assets valuation unless and except the company is one which satisfies the conditions imposed by subsection (5) of section 29.* These conditions are as follows and are alternative :

(i) That immediately after the deceased's death a person having control or powers equivalent to control of the company, either alone or in conjunction with his relatives, had a beneficial interest in possession in the shares or debentures, or,

(ii) That immediately before and after the death the shares or debentures are held by the trustees of some trust who then have control of the company by virtue of shares in or debentures of the company held by them as such trustees.

The provisions of section 31 supply definitions for the terms of art contained in the foregoing, thus—

Relative—section 31 (1) (d).

Powers equivalent to control—section 31 (1) (e).

Beneficial interest in possession—section 31 (3).

The proviso (to section 29 (5)) deals with the case of shares or debentures charged under section 2 (1) (c) of the Finance Act, 1894, as the subject-matter of gift or in relation to which the charge of duty under section 1 of the Act of 1894 is preserved by force of section 43 of the Finance Act, 1940. In both these cases the conditions above set out are not to apply and there will be an assets valuation in the following circumstances only—

> " if immediately after the death or at any previous time since the gift or since the disposition or determination as the case may be the donee or person becoming entitled by virtue of or upon the disposition or determination have or had control or powers equivalent to control in the company either alone or in conjunction with his relatives."

Apart, therefore, from the straightforward case of control the valuation by reference to underlying assets is called for or will be called for where the conditions (of subsection (5) of section 29) above set out or either of them are satisfied and either:—

(i) the deceased had powers equivalent to control during a continuous period of two years within the five-year period preceding his death, or

(ii) during a continuous period of two years falling within the five-year period the deceased satisfied the " dividends and interest " test, or

(iii) at any time within the five years ending with his death the deceased satisfied the " nominal capital " test.

To summarise, the picture is either that there is voting control or the capacity to secure that control within five years of the relevant death with a consequential valuation under section 55, or alternatively under section 55 as amended by the present provision, shares or debentures of the company pass or are deemed to pass and either control is immediately after the relevant death in the hands of a family group or both immediately before and after the relevant death the shares or debentures are held by trustees having control by virtue of the trust holdings. It will, however, be noted that in this latter instance it is not necessarily the whole of the deceased's shares which are to be the subject of a section 55 valuation, but only those shares or debentures which fall within and satisfy the tests prescribed by subsection (5) of section 29.

Other Amendments of, or Affecting, Finance Act, 1940, s. 55 (Section 30)

The section grants four differing forms of relief where shares in or debentures of a company pass or are deemed to pass at death and there is (or but for the present provision would be) a valuation by reference to the underlying assets of the company.

The first deals with the situation where such shares or debentures are sold within a period of three years following the death and then realise less than the previous valuation. In such circumstances, and subject to the conditions noted below, the sale price is to be adopted as the value for Estate Duty purposes and the difference, as represented by the duty suffered, is to be repaid. The conditions for the application of this relief are as follows :—

(i) The sale takes place within three years after the death.

(ii) The vendor is either a person accountable for the duty payable on the death or a person to whom the shares or debentures passed on that death.

(iii) Neither the vendor nor any person interested in the proceeds of sale is a relative of the purchaser or of any person interested in the purchase.

(iv) The sale was made at arm's length for a price freely negotiated at the time of sale, and

(v) The price obtained was less than the valuation made under section 55, account being taken of any change of circumstances between the dates of sale and of death.

It will be noted that the Commissioners of Inland Revenue must be " satisfied " regarding the conditions specified at sub-paragraphs (iii), (iv) and (v), *supra*.

The second form of relief applies where a gift of shares or debentures is made and the donor's death ensues within five years thereafter. In such circumstances the valuation is not to be made under section 55 if the following conditions are shown to the satisfaction of the Commissioners of Inland Revenue to exist:—

(i) The shares or debentures were given absolutely to a past or present employee of the company (in question) or to the widow or orphan of such person, and

(ii) The donee was not a relative of the deceased (relative as defined by section 31 (1) (d)),

(iii) Possession of the shares was assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the deceased and of any benefit to him by contract or otherwise,

(iv) The donee did not have control or powers equivalent to control of the company (powers equivalent to control, *cf.* section 31 (1) (e)) either alone or in conjunction with his relatives immediately after the gift or at any time since the date of gift.

The third measure of relief relates to liabilities of the company for taxation on income or profits arising after the death in question, "in so far as the liability or its amount is referable to income or profits *accruing before the death.*"

The particular inequity had arisen from the former section 50 of the Finance Act, 1940, dealing with the method of valuation of the assets of the company in question, the courts having held in *Re Duffy, Lakeman* v. *Att.-Gen.* [1949] Ch. 28, that the liabilities referred to in the section (50) did not include tax charged under Schedule D by reference to the profits of the basis period during which the death in question took place, since until that tax was assessed it was not a liability.

The present subsection (3) directs that such contingent liability, which apparently includes liability both to income tax and profits tax, upon the present bases of charge, must be taken into account and treated as a liability in computing the net value of the assets.

Fourthly, the quick succession relief granted by section 15 of the Finance Act, 1914, which applies where land or business or an interest in land or business passes twice within a five-year period and on each occasion attracts Estate Duty, is to be extended to the passing of shares or debentures, if valued under section 55 of the Finance Act, 1940, on two occasions within the five-year period. Where this happens the shares or debentures, as the case may be, are to be treated in the same way as an interest in land or business (under section 15, *supra*), provided that the value of those shares or debentures is in whole or part attributable to land or to business assets used by the company in question (or its subsidiary) in a business not consisting mainly in the holding of or dealing in investments other than land. Where the value relates in part only to the value of these assets relief is given upon that part, *cf.* section 31 (5) which deals with the determination of that part of the value of shares or debentures attributable to the value of particular assets of a company.

Finally, the provisions of subsection (5) make it clear that the four separate forms of relief dealt with by this section, as above indicated, are not forfeited by a bonus issue of shares as these

reliefs are to apply, " both to the shares in respect of which the issue was made and to the shares so issued (by way of bonus) as if they were derived from the former by subdivision."

Extension of Certain Exemptions (Section 32)

The exemption limit is raised to £3,000 (previously £2,000) and the rates altered to 1 per cent. (from 2 per cent.) in the case of estates between £3,000 and £4,000 in value.

The surviving spouse relief, granted by the conjoint effect of section 5 (2) of the Finance Act, 1894, section 13 of the Finance Act, 1898, and section 14 (a) of the Finance Act, 1914, is amended in cases where the death of the surviving spouse takes place after July 30, 1954. In this case relief will be available although no duty was paid on the prior death by reason of any exemption.

Aggregation (Section 33)

The section deals with two separate subjects, the first the aggregation of settled and unsettled property passing on death, the second aggregation in relation to policies of assurance on the life of the deceased.

First, therefore, by section 16 (3) of the Finance Act, 1894, as amended by the Finance Acts, 1946 and 1947, a measure of relief was provided for small estates as, by these provisions, property of £2,000 value and less passing on death was not to be aggregated with other property then passing (or deemed to pass) otherwise than by will of the deceased. Subsection (1) of the present section substitutes a new subsection (3) to section 16, *supra*, and, under the substituted measure the benefit of non-aggregation will extend to the unsettled property of a net value not exceeding £10,000. The section also provides for a measure of marginal relief. It will be noted that the qualification to the relief previously made extended only to property settled by will of the deceased, but that under the substituted measure settled property for this purpose does not include " property comprised in a settlement made by the deceased or made directly or indirectly at his expense or out of funds provided by him." There is also excluded, of course, property of which the deceased was competent to dispose at the date of death (for the terms " settled property " and " settlement " see section 22 (1), the Finance Act, 1894).

Secondly, by section 4 of the Finance Act, 1894—the general measure which requires aggregation of all property passing at death for the purpose of determining the rate of duty leviable—there was excluded (by proviso) " property in which the deceased never had

an interest." Until the change in the law which the present section effects it had, therefore, been the accepted view that money payable under a policy of assurance nominated irrevocably *ab initio* by the deceased in favour of an individual or individuals, certainly where the nomination was made under the Married Women's Property Acts and possibly by the terms of an express trust, was property in which the deceased never had an interest. It therefore followed that there could be no aggregation of the policy money payable at death with other property then passing, or indeed any aggregation of such policy moneys *inter se*.

In the result there had undoubtedly been instances where duty on quite extensive estates was wholly avoided by the simple expedient of procuring the issue of numbers of policies nominated under the Married Women's Property Acts, no one policy exceeding the current exemption limit for estate duty, that is to say, until the date of the present Act, £2,000.

Subsection (2) of the present section is directed generally to the position as above set out and applies in the following circumstances :—

(i) Where property passing on the death includes policies of assurance on the life of the deceased or moneys received under such policies or interests in such policies, and

(ii) The foregoing property (for the purposes of the section collectively termed " life insurance ") is property in which the deceased never had an interest.

The position regarding aggregation will then be :—

(a) All life insurance as above defined is to be aggregated together and will attract duty as if it were one single composite estate, *subject to exception where*,

(b) One person only is absolutely entitled for his own benefit to such life insurance immediately after the death in question (and is so entitled other than by purchase) in which case the rate is determined by aggregating the value of all the life insurance to which that individual is entitled.

Provision is made also for the following special circumstances :—

(i) Of life assurance exempted from duty at the relevant death which is not to be taken into account for the purposes of this subsection; that is to say it will not be aggregated and will not therefore affect the rate of duty payable on life assurance within the scope of the section.

(ii) Of life assurance subject to a mortgage or charge when the mortgage or charge is to be disregarded and the life assurance valued accordingly for the purpose of determining the rate of duty applicable.

(iii) For the death of the person entitled to the life insurance which is to be disregarded, for the purposes of the section, unless and until his estate has been fully administered and the life insurance *ex hypothesi* vested in another individual or individuals, beneficially.

(iv) For the case where several persons are interested in the policy for apportioning the value of that policy.

EXERCISE OF STATUTORY POWERS BY LOCAL AUTHORITIES

By W. A. West, LL.B., Barrister-at-Law

> " I suppose that a local authority can get rid of a tenant if they do not like the colour of his eyes."—Goddard L.C.J. in *Jenkins* v. *Paddington Borough Council*, *The Times*, May 13, 1954.
>
> " I suppose that if the defendants were to dismiss a teacher because she had red hair, or for some equally frivolous and foolish reason, the court would declare the attempted dismissal to be void."—Warrington L.J. in *Short* v. *Poole Corporation* [1926] 1 Ch. 66.

In *Jenkins* v. *Paddington Borough Council* (*supra*) the appellant was the tenant of a flat in a block of flats owned by the Paddington Borough Council and which was included in the Council's Housing Revenue Account. Section 156 of the Housing Act, 1936, as amended by the Housing Act, 1949, provides :—

" (1) Nothing in the Rent and Mortgage Interest Restrictions Acts, 1920 to 1933, as amended by any subsequent enactment shall be deemed to affect the provisions of this Act relating to the obtaining possession of a house with respect to which a demolition order or a clearance order has been made, or to prevent possession being obtained—

(a) of any house possession of which is required for the purpose of enabling a local authority to exercise their powers under any enactment relating to housing; . . . .

" (2) Where a local authority, for the purpose of exercising their powers under any enactment relating to housing, require possession of any building or any part of a building of which they are the owners, then, whatever may be the value or rent of the building or part of a building, they may obtain possession thereof under the Small Tenements Recovery Act, 1838, as in the cases therein provided for, at any time after the tenancy of the occupier has expired, or has been determined."

The appellant's tenancy was determined by notice to quit, but the appellant refused to give up possession. The only reason for the proceedings was that the appellant's tenancy was not in all respects satisfactory, and there was no evidence other than that as to the purpose for which the council required possession of the

premises. The Divisional Court dismissed the appeal from the magistrate's order granting possession to the local authority. The Lord Chief Justice said that since *Shelley's* case (*i.e.*, *Shelley* v. *L. C. C.* [1949] A.C. 56) it was impossible to find a way of preventing a local authority, if they wished, from getting possession of such property for a good, or maybe a bad, reason. The local authority were in the same position as the landlords were before the Rent Restrictions Acts.

In *Shelley* v. *L. C. C.*, the council wished to obtain possession of a flat in order to house another tenant. The court had to decide whether the ejection of a tenant under their powers of management conferred by section 83 (1) of the Housing Act was the exercise of "powers under any enactment relating to housing" within the meaning of section 156.

Section 83 (1) provides:—

"The general management, regulation, and control of houses provided by a local authority under this Part of this Act shall be vested in and exercised by the authority, and the authority may make such reasonable charges for the tenancy or occupation of the houses as they may determine."

It was held that section 156 applies when the authority are exercising their powers under section 83 and the local authority were entitled to an order for possession. "It is to my mind one of the important duties of management that the local body should be able to pick and choose their tenants at their will. It is true that an ordinary private landlord cannot do so, but local authorities who have wider duties laid on them may well be expected to exercise their powers with discretion and in any case the wording of the Act seems to me to necessitate such a construction." (*Per* Lord Porter, at page 66.)

It is submitted that, despite Lord Goddard's dictum in *Jenkins* v. *Paddington Borough Council* (*supra*), "at their will" does not mean capriciously or for alien or irrelevant reasons. Although there is no specific name for the principle in English law, the courts have long recognised the doctrine known in French administrative law as "détournement de pouvoir." Statutory powers must be exercised bona fide for the purpose for which conferred and not for any collateral or improper reason. In *Pilling* v. *Abergele U. D. C.* [1950] 1 K.B. 636, for example, a local authority's refusal of a licence under section 269 of the Public Health Act, 1936, was held to be invalid because it was an attempt to use powers under the Public Health Act (which is concerned with sanitary considerations) for town and country planning purposes, *viz.*, preservation of amenities.

Similarly, in *Marshall* v. *Blackpool Corporation* [1935] A.C. 16, it was held that it was *ultra vires* the local authority to attempt to impose town planning restrictions under a statute enabling them to control the making of crossings over footways as the statute under which they purported to act was concerned only with highway considerations.

As Lord Greene M.R. said in *Associated Provincial Picture Houses, Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223, at p. 237, "The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account." In *Westminster Corporation* v. *London and North Western Railway Company* [1905] A.C. 426, Lord Macnaghten said (at page 430): "It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first."

Many cases of this kind are concerned with the alleged misuse of compulsory purchase powers. One of such cases was *Denman* v. *Westminster Corporation* [1906] 1 Ch. 464, in which Buckley J. said (at page 476): "The local authority are entrusted with statutory powers, to be used bona fide for the statutory purpose and for none other." In *Sydney Municipal Council* v. *Campbell* [1925] A.C. 338, the Privy Council held that it was *ultra vires* for the Sydney Municipal Council, under a power to purchase land "required" for improvement, to purchase land which would be bettered by the proposed improvement scheme, solely with a view to recouping themselves for the cost of the improvement.

"A body such as the municipal council of Sydney authorised to take land compulsorily for specified purposes, will not be permitted to exercise its powers for different purposes, and if it attempts to do so, the courts will interfere." (Duff J.) The question here was whether the land was "required" for improvement purposes. The Privy Council held that it was not. In the Housing Act, 1936, the word "required" appears in both subsections of section 156. It is submitted that possession can only be "required" for the purpose of exercising housing powers if those powers are exercised in good faith for the purpose for which they were conferred.

The dismissal of married women school-teachers during the period of widespread unemployment between the Wars was proliferous of litigation on the grounds that the local authorities were not within their powers in taking into consideration "alien and irrelevant" purposes when exercising their statutory powers. In one of such cases (*Price* v. *Rhondda U. D. C.* [1923] 2 Ch. 372, 389) Eve J. said (adopting, unconsciously or at any rate without acknowledgment, the words of Romer J. in *Short* v. *Poole Corporation, supra*) ". . . it is sufficient to point out that this body being a statutory body entrusted with statutory powers, can only exercise those powers for the purpose and with the object of giving effect to the statutory duties imposed upon it. . . ."

In *R.* v. *Farnborough U. D. C.* [1920] 1 K.B. 234, Avory J. said (at page 240), " . . . when the court comes to the conclusion that the local authority have not properly exercised their jurisdiction because they have taken extraneous matters into account and allowed themselves to be influenced by them, it is the duty of this court to intervene."

A local authority will nevertheless be presumed to act in good faith, and if they give no reasons for a decision it will be difficult for an aggrieved person to establish that they have not acted in good faith. But, as Sargant L.J. said (at page 94), in *Short* v. *Poole Corporation* (*supra*), "And it may be, though it is difficult to imagine an example, that the action of a local authority was on the face of it so frivolous, arbitrary or vexatious, that the court would infer mala fides."

In *Jenkins* v. *Paddington B. C.*, Lord Goddard said he would be loth to allow the appeal because "the council would only have to start again. They told the magistrate that the appellant was not a suitable tenant. Their duty was to get rid of an unsuitable tenant." This cannot be doubted and would clearly be a proper exercise of the council's powers, but it is submitted that Lord Goddard is not supported by *Shelley* v. *L. C. C.* and was indeed going against a strong body of authority when he went on to say that the local authority could get possession for a good, or maybe a bad, reason.

The local authority may use their powers under section 156 to get rid of a tenant provided that they use their powers bona fide for housing purposes; they must exclude extraneous considerations such as the colour of the eyes, the hair or even the nose of the tenant.

NOTES OF RECENT CASES

1. *REAL PROPERTY AND CONVEYANCING*

By F. R. Crane, ll.b., Solicitor

Smith v. *Jones* [1954] 1 W.L.R. 1089; [1954] 2 All E.R. 823 (Ch.D.)

Notice—tenant in possession—claim to rectification—inquiries to be made by purchaser—Law of Property Act, 1925, *s.* 199 (1).—The Law of Property Act, 1925, s. 199 (1) provides that a purchaser of land shall not be prejudicially affected by notice of any matter unless " (a) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him. . . ." A purchaser " should inquire of all tenants or occupants of the property sold as to the extent of their interest therein, for if he has notice of a tenancy of any part of the property he will be affected with notice of all rights or equities of the tenant against the vendor with regard not only to the lease but also to all collateral matters " (Williams, *Vendor and Purchaser,* 4th ed., Vol. 1, pp. 636–7; *Barnhart* v. *Greenshields* (1853) 9 Moo. P.C. 18). Thus he has notice of a covenant for renewal in the lease (*Taylor* v. *Stibbert* (1794) 2 Ves. 437), of an option to purchase granted after the lease (*Daniels* v. *Davison* (1809) 16 Ves. 249) and of a sale of timber to the tenant subsequent to the lease (*Allen* v. *Anthony* (1816) 1 Mer. 282).

In the present case the original landlord and tenant (the plaintiff) for some time acted on the erroneous view that the tenancy agreement cast the onus of repair on the landlord. The landlord sold to the defendant, who made no inquiries as to the correctness of the copy tenancy agreement he was shown. The plaintiff, now asked to do repairs, sought rectification of the agreement. This was refused but the case is reported only on the further decision of Upjohn J. that in any event the defendant could set up the plea of bona fide purchaser for value without notice of any equity to rectification, even if such had existed. The learned judge accepted the principles set out above (referring to the cases there mentioned) but held that the defendant's only duty was to check that the copy tenancy agreement produced for him was a true copy. " He was under no obligation in my view to proceed further and say ' Does that correctly represent your rights? ' " ([1954] 1 W.L.R. at p. 1092; [1954] 2 All E.R. at p. 828).

The scope of this decision is, it is thought, limited. A purchaser must, clearly, ascertain the actual terms of the tenancy that bind landlord and tenant and also whether the tenant claims any further rights. Since 1925, of course, some of the latter may have to be protected by registration to affect a purchaser (Law of Property

Act, s. 199 (1) (i); *Wright* v. *Dean* [1948] Ch. 686). Furthermore, Upjohn J. was considering constructive notice under the second part of section 199 (1) (ii) (a) of the Law of Property Act, 1925. What if the purchaser actually knows of a valid claim to rectification—a matter "within his own knowledge"? To hold him not bound in such circumstances would be to decide that an equity to rectification does not, by its nature, bind successors in title. The present decision cannot, it is submitted, be regarded as any authority on that point.

---

2. *TRUSTS*

By F. R. Crane, ll.b., Solicitor

Inland Revenue Commissioners v. *Broadway Cottages Trust*
Same v. *Sunnylands Trust* [1954] 3 W.L.R. 438, [1954] 3 All E.R. 120 (C.A.)

Trust to distribute income—uncertain class of beneficiaries—invalidity.—The Court of Appeal (Singleton, Jenkins and Hodson L.JJ.) has affirmed the decision of Wynn-Parry J. (noted *ante*, p. 317). The court must be able to control and execute a trust and consequently "a trust for such members of a given class of objects as the trustees shall select is void for uncertainty unless the whole range of objects eligible for selection is ascertained or capable of ascertainment" (*per* Jenkins L.J. delivering the reserved judgment of the court [1954] 3 W.L.R. at p. 449; [1954] 3 All E.R. at p. 128). Various suggestions for modified execution, by way of allocating funds to ascertained beneficiaries, or appointment of trustees willing to exercise the discretion, were rejected. Equality is equity.

The Court of Appeal also agreed that a power of appointment is valid providing some of the objects are ascertainable (referring to *Re Gestetner's Settlement* [1953] Ch. 672 and the "hybrid power" cases, such as *Re Park* [1952] 1 Ch. 580), and that the relations cases (*e.g.*, *Re Scarisbrooke* [1951] Ch. 622) are exceptional and *sui generis*.

This decision, like *Re Greaves* [1954] Ch. 434 (*ante*, p. 310), is to be welcomed because the Court of Appeal, in a considered and elaborate judgment, has done as much as possible to settle the law in a matter where certainty is a primary requirement. It also underlines the importance, especially in this tax-saving type of settlement, of both the decision whether to confer a power or to create a trust, and of clarity in drafting once the choice has been made.

Re Rydon's Settlement [1954] 3 W.L.R. 480; [1954] 3 All E.R. 1 (*sub nom. Re Rydon Marriage Settlement*) (C.A.)

Settlement — construction — covenant to settle after-acquired property—whether accretion to original fund—exercise of power of

appointment.—By her marriage settlement a wife covenanted to settle after-acquired property which was to be held "upon the trusts hereinbefore declared concerning . . . the wife's trust fund" except certain provisions for raising capital. By her will the wife, who died in 1941, exercised a power of appointment, referring to "divers trust funds and property . . . hereinafter referred to as the wife's trust fund." The Court of Appeal (Evershed M.R., Jenkins and Hodson L.JJ.), reversing an unreported decision by Roxburgh J., held:—(1) That a reversionary interest, falling into possession in 1953 and caught by the after-acquired property clause, accrued to and was amalgamated with the original trust fund so as to pass under the appointment made by the wife. The court was impressed by the difficulty of working the usual hotchpot clause if there were two or more funds, and preferred *Re Fraser* [1913] 2 Ch. 229 to *Re Cavendish* [1912] 1 Ch. 791. (2) That even if there had been two funds the language of the appointment was apt to pass them both.

The value of this decision as a precedent is limited, for there is no law or presumption applicable—each will must be construed as a whole (*Re Marke-Wood* [1913] 2 Ch. 574, *per* Cozens-Hardy M.R., cited in the present case). Perhaps there is now some bias towards a construction favouring amalgamation. It may be added that forms in both Key and Elphinstone (15th ed., Vol. 2, at pp. 680, 1048, 1055) and Prideaux (24th ed., Vol. 2, pp. 118, 140, 235) provide specifically for accretion of after-acquired property to the principal fund, and for the appointment of all funds subject to the settlement.

---

3. *WILLS*

By A. Kiralfy, Barrister-at-Law

Harvell v. *Foster* [1954] 3 W.L.R. 351; [1954] 2 All E.R. 736

Administrator not functus officio—liability of sureties on administration bond—Judicature Act, 1925, *ss.* 165, 167.—The Court of Appeal have delivered a very useful judgment on the dual aspect of an administrator's character, and restored what may, with respect, be termed a common-sense situation. In one sense an administrator is always a trustee, it was pointed out, as in the provision of Administration of Estates Act, 1925, s. 30, as to the property of an intestate being held by his administrators on trust for sale. In another sense, however, it may be necessary to distinguish between an administrator and a trustee. The usual problem arises under the law of limitation of actions. An action to recover personal estate to which the plaintiff becomes entitled on intestacy must, under section 20 of the Limitation Act, 1939, be brought within twelve years. Only if this section does not apply can one apply the six-year limitation period under section 19 (2) of the same statute. In the instant case there was no problem of limitation, the real difficulty being quite different. The original testator bequeathed his entire estate to his infant daughter and

appointed her sole executrix. Administration *cum testamento annexo* was granted to her husband until she attained her majority. He had power to appoint trustees to hold the property for her, under section 42 of the Administration of Estates Act, if the delay in winding up the estate proved burdensome to him, but he did not avail himself of this power. Instead he absconded with the greater part of the money to which his wife was entitled.

The action was brought by the wife, after attaining the age of twenty-one, against the solicitors who were sureties of the bond for due administration of the estate, which the husband had given, the bond having been assigned to her for enforcement. The sureties argued that the administration was completed when the net residue was cleared, even though the husband never transferred it to his wife. The Court of Appeal had no difficulty in rejecting this argument. The administrator could only obtain his discharge by honestly performing his duties and accounting to the wife, and the sureties remained liable, for their part, until he did so. Conversion to his own use was hardly the true and proper administration of the estate which he had undertaken. Had a problem of limitation been involved it is submitted that the twelve-year period would have applied in this case.

Different considerations apply where, for example, the personal representatives are also trustees of the residue after completion of the administration, or where an executor is entitled to the first life interest in the property.

(Williams on Executors 253, 1121.)

---

4. *PLANNING CASES*

By T. A. Blanco White, Barrister-at-Law

Darlassis v. *Minister of Education* (1954) 4 P. & C.R. 281

Compulsory purchase—decision of Minister—natural justice.—This case makes an interesting and important addition to the collection of " natural justice " cases. The facts may be summarised as follows. A compulsory purchase order was made by the London County Council in relation to a site for a proposed school. The landowner objected; and at the inquiry suggested (as a landowner objecting to compulsory purchase must, in practice, if he is to succeed) an alternative site. The London County Council were unwilling to adopt this alternative site, since they wanted it for housing. A public inquiry was held before an inspector of the Ministry of Education (an inspector of the Ministry of Housing, etc., was present too, but nothing appears to turn upon that). The inspector reported that the alternative site was slightly the better, and recommended refusing to confirm the compulsory purchase order, assuming that the alternative site could be made available. The Ministry of Education, on receiving the report, communicated with the Ministry of Housing, etc., as to the availability

of the alternative site. The Ministry of Housing rang up the London County Council, who stated (as might have been expected) that it would be very difficult at that stage to stop the paper preparations for using the alternative site for housing. This statement, made by an anonymous official of the Council, was accompanied by corroborative detail (the accuracy of which, however, was afterwards disputed). On receiving this statement, the Ministry of Housing, etc., passed it on to the Ministry of Education, which invited the inspector to modify his report accordingly. The Minister of Education then confirmed the compulsory purchase notice. The landowner objected to the confirmation, on the ground that the Minister had acted, in part, upon information supplied by one party to the dispute (the London County Council) in the absence of the other. *Held*: Not so: what the Minister of Education acted upon was not information supplied (directly or indirectly) by the London County Council, but a policy decision by the Minister of Housing, etc., that he would not release the alternative site. This was legitimate.

Assuming this to be a correct decision on fact, it would seem to be correct in law too: though it would also seem to be precisely the sort of legal quibble that makes certain parts of the law so unpopular. It amounts in effect to saying this: that whilst the acquiring authority in such a case must not influence the actual Ministry deciding the dispute behind the objector's back, they may legitimately produce the same result by influencing other Ministries. As a decision on fact, however, it seems open to question. The Ministry of Housing may have communicated a policy decision to the Ministry of Education, but they also communicated a statement of fact originating with the London County Council, and upon this statement of fact the Minister of Education seems to have acted. Of course a wrong decision on fact in itself harms no one but the unsuccessful party. The danger is that the Ministries concerned will deduce that if they could get away with this they can get away with anything. Indeed, perhaps they can.

---

5. *LANDLORD AND TENANT*

By J. Muir Watt, M.A., of the Inner Temple, Barrister-at-Law

Richmond v. *McGann* [1954] 3 All E.R. 97

Leasehold Property (Temporary Provisions) Act, 1951—*meaning of "in right of the tenancy"—daughter of tenant paying an economic rent not residing "in right of" her mother's tenancy.*—One of the conditions for the continuation (or rather, resurrection) of a tenancy under section 2 of the Leasehold Property (Temporary Provisions) Act, 1951, was that immediately before the expiration of the expired long tenancy the tenant or a member of his family was residing in a dwelling-house comprised in the property "in right of the tenancy." In this particular case the tenant was not herself residing in the premises, but had allowed her daughter to reside there on payment of

what was in effect an economic rent. Pilcher J. held that the daughter was really a subtenant of the tenant and could not be said to be residing in the premises in right of the latter's tenancy. One of the essential conditions for the operation of the 1951 Act, therefore, failed. The effect in this case was that the tenant could not take advantage of the protection in regard to the enforcement of repairing covenants given by section 5 (1) (*a*) of the Act.

It should perhaps be mentioned that section 5 of the 1951 Act (which was, of course, extended by the Leasehold Property Act and Long Leases (Scotland) Act Extension Act, 1953) has been repealed by the Landlord and Tenant Act, 1954. The extension of the period of operation of the 1951 Act to December 24, 1954, by the 1953 Act, so far as the continuation of the long tenancies in question is concerned, is not, however, affected by the 1954 Act.

(Woodfall, 25th ed., p. 1086.)

Woollett v. *Minister of Agriculture and Fisheries* [1954] 1 W.L.R. 1149; [1954] 2 All E.R. 776

Agriculture Act, 1947—*agricultural land tribunal—validity of appointment of nominated members—appointment by secretary of tribunal—validity of Minister's certificate—Acquisition of Land (Authorisation Procedure) Act,* 1946.—This much publicised case does not relate directly to the law of landlord and tenant, but the position and functions of agricultural land tribunals are of great importance for one branch of that law, namely, the law of agricultural holdings, and for that reason the case is of interest here. The point actually arose in relation to a certificate under section 85 (2) of the Agricultural Act, 1947, which is given the same effect as a compulsory purchase order. The plaintiff appealed to an agricultural land tribunal against the Minister's proposal to give a certificate. The two members of the tribunal other than the Chairman were appointed by the secretary of the tribunal, acting in his capacity as secretary and not as an officer of the Ministry of Agriculture acting on behalf of the Minister. By paragraph 15 of the Ninth Schedule to the Act (amended since these events by the Agriculture (Miscellaneous Provisions) Act, 1954, as will be seen below) these two members had to be appointed by the Minister for each reference. The tribunal thus constituted decided against the plaintiff and, in due course, what purported to be a certificate under section 85 (2) was issued on behalf of the Minister, the effect of which, if valid, was to give the Minister power to purchase the plaintiff's land compulsorily. The plaintiff, however, challenged the validity of the tribunal's decision and of the subsequent certificate on the ground that the tribunal had not been properly constituted. Stable J. decided in the plaintiff's favour. The appointment of the two nominated members by the secretary of the tribunal was not an appointment by the Minister, since the secretary did not propose to act, did not have authority to act, and did not in fact act on behalf of the Minister in making the appointment. He was functioning as the secretary of the tribunal and as nothing else.

Stable J. dismissed two rather formidable arguments designed to show that, notwithstanding this flaw in the constitution of the tribunal, its proceedings and the subsequent certificate were valid. The first argument was based on paragraph 20 (2) of the Ninth Schedule to the 1947 Act, which provides that the acts of a tribunal shall, notwithstanding a defect in its appointment, be as valid as if that defect had not existed. Stable J. met this by holding that the present case was not one where there had been a defect in appointment but one where there never was an appointment at all. The second argument was based on the provision in section 92 (2) of the 1947 Act that a certificate is to have effect as if it were a compulsory purchase order under section 1 of the Acquisition of Land (Authorisation Procedure) Act, 1946, coupled with a provision in the latter Act that such an order could not be questioned except by an application to the High Court within six weeks of the date of the Minister's notice confirming the order. Stable J. defeated this argument by a somewhat similar method. He held that the immunity of a certificate from challenge under this provision applies only where the certificate is a proper certificate in the first instance. Here what purported to be a certificate never was a certificate because an essential precondition, a reference to a properly appointed tribunal, had not been observed. Stable J. has clearly placed a restricted interpretation both on paragraph 20 (2) of the Ninth Schedule to the 1947 Act and on paragraph 16 of the First Schedule to the 1946 Act, and it will be interesting to see whether the Court of Appeal upholds his views.

It should be mentioned here for completeness that the method of appointment of nominated members of agricultural land tribunals has now been altered by section 4 of the Agriculture (Miscellaneous Provisions) Act, 1954. They are now nominated by the Chairman of the tribunal, not by the Minister, from a panel maintained by the Lord Chancellor, not by the Minister.

---

6. *MISCELLANEOUS*

Solomons v. *Gertzenstein (R.), Ltd.* [1954] 3 W.L.R. 317; [1954] 2 All E.R. 625

London Building Acts (Amendment) Act, 1939, *s.* 33—*meaning of "owner"—receiver included.*—The London Building Acts (Amendment) Act, 1939, s. 33, contains a definition of "owner" which expressly includes an agent for the owner. The decision in this case in the lower court was noted (*ante,* p. 333) on the point that a receiver appointed by a mortgagee was held to be an owner within the definition because he was an agent for the owner, the mortgagor. The Court of Appeal expressed agreement with this part of the judgment, but reversed the decision on other grounds.

Thomson v. *Thomson and Whitmee* [1954] 3 W.L.R. 241; [1954] 2 All E.R. 462

Variation of settlement on divorce.—In this case an application was made, on the divorce of the parties, under the Matrimonial Causes Act, 1950, s. 25, to vary a marriage settlement and one of the avowed objects of the proposed variations was to reduce the amount of tax which would otherwise be payable. Davies J. held that the House of Lords' decision in *Chapman* v. *Chapman* [1954] 2 W.L.R. 723 (noted *ante,* p. 316) had no bearing on the matter, as that case was concerned with the inherent jurisdiction of the court to vary a settlement, whereas in the instant case there was express jurisdiction to vary conferred by statute. Accordingly, the court was not prevented from varying a settlement merely because tax would be avoided, nor was there any sort of ground of public policy requiring the court to hesitate to make the variation; in the result the proposed variations were approved. This does not mean that the break-up of a marriage may be used as an excuse to correct drafting inefficiency wholly unrelated to the break-up; in the registrar's report he stated: ". . . in my submission, where the untimely disruption of the marriage would adversely affect the children on taxation, the court would not hesitate to make any reasonable variation of a settlement for the preservation of their interest." The registrar's reasoning was expressly adopted by the learned judge.

THE LIBRARY

Woodfall's Law of Landlord and Tenant. Twenty-fifth Edition. By Lionel A. Blundell, ll.m., of Gray's Inn, Barrister-at-Law, with Assistant Editors. Sweet & Maxwell, Ltd. 1954. clxxvi and 1766 pp. (£6 6s.).

A new edition of Woodfall, after an interval of fifteen years, is a publishing event of major importance. In view of the wide ramifications of the law of landlord and tenant the editorial task of revising this classic textbook on the subject is a formidable one. The editor, Mr. Lionel A. Blundell, is, however, an acknowledged master of this branch of the law, and he and his assistant editors have discharged their task with ability and distinction. Woodfall has its own individual merits and flavour, which have been preserved in this edition. It has a unity and completeness, and a traditional approach, which are not to be found together to the same extent in other textbooks.

A vast amount of work has gone into the preparation of this edition. Fifteen years of case law and statute law have had to be dealt with, and this has been faithfully done. A good deal of rewriting has been involved; the editor and his assistants have not been satisfied with mere patching. The book is attractively produced and bound, and the use of thinner paper has enabled 335 extra pages to be added without appreciably increasing the bulk. The editor, the assistant editors and the publishers deserve to be congratulated on the successful accomplishment of an important job.

It is expected of a reviewer that he should make a few criticisms in order to justify his existence. Let it be said at once, however, that the criticisms which follow are intended to be helpful and that they in no way cast doubt on the solid excellence of this edition.

Woodfall has been noted for its satisfactory treatment of the law of agricultural holdings, and among its previous editors have been such well-known experts in this field as Aubrey J. Spencer and W. Hanbury Aggs. The present editor continues this tradition, and the provisions of the Agricultural Holdings Act, 1948, receive a careful although necessarily concise, exposition. A few suggestions may perhaps be made in this connection. Paragraph 2262 does not quite bring out the point about the weakness of the agricultural subtenant's position which is illustrated by *Sherwood* (*Baron*) v. *Moody* [1952] 1 All E.R. 389. The point here was that the subtenant, although able to serve a counternotice, and although in fact he succeeded in securing a refusal of consent to the headtenant's notice to quit, was in no better a position than if Regulation 9 (1) of the Agriculture (Control of Notices to Quit) Regulations (S.I., 1948, No. 190), had not applied, and the subtenant had thereby been prevented from serving a counternotice. It is a little dangerous to say, in paragraph 2265, in relation to *Re Disraeli Agreement* [1939] Ch. 382 and *Coates* v. *Diment* [1951] 1 All E.R. 890, that a minimum of one month's notice for the resumption of possession is essential, since the *tenant* must be allowed an opportunity of giving a month's notice under section 34 (2) (c) or section 56 (1) of the 1948 Act if he wishes. The landlord's minimum notice must, therefore, be more than precisely a month's notice. Something might have been said about the possible effect of *Coates* v. *Diment* on forfeiture clauses in agricultural tenancy agreements, a point which the Ministry of Agriculture took seriously enough to revise its model smallholdings tenancy agreement. Section 9 of the Agriculture (Miscellaneous Provisions) Act, 1949 (which deals with the Minister's right to certain tenants' compensation

on giving up requisitioned land) might have been mentioned, as it is quite important in practice. The rather unexpected section 12 of the Allotments Act, 1950, which (giving permanent effect to most of the old Defence Regulation 62B) nullifies contractual restrictions on keeping hens and rabbits (a provision not confined to allotments) also deserves a mention, particularly as other sections of the Act are dealt with.

Among miscellaneous points, should not paragraph 15 be altered more drastically in view of the *Marcroft Wagons* v. *Smith* [1951] 2 K.B. 496 line of cases? Would it not be helpful to discuss the distinction between building and occupation leases, somewhat on the lines of paragraphs 22–25 of the Final Report of the Leasehold Committee although there is no essential difference in their legal structure? In paragraph 776 *Strutt* v. *Panter* [1953] 1 Q.B. 397 is cited for the proposition that "a person must have been a tenant before he can become a statutory tenant." This proposition cannot, since the decision in the House of Lords in *Moodie* v. *Hosegood* [1952] A.C. 61, be regarded as quite correct. As Megarry has pointed out (in L.Q.R., Vol. 67 (1951), page 515) "a new statutory tenancy can arise in favour of a person who has never been a tenant but has been at most a mere licensee or matrimonial occupier." Perhaps the effect of *Phillips* v. *Hallahan* [1925] 1 K.B. 756 is stated too positively in paragraph 902 (on pages 380 and 387) in view of the comments made in the Appendix to the Interim Report of the Leasehold Committee (page 34 of the Report). The amendment of section 79 of the Housing Act, 1936, by section 3 of the Housing Act, 1952, seems to have escaped attention. Indeed the 1952 Act, which contains a few other relevant provisions, does not appear at all in the Table of Statutes. *Birch* v. *Wigan Corporation,* cited in paragraph 1854, was overruled by section 10 of the Local Government (Miscellaneous Provisions) Act, 1953, which was passed on July 14, 1953, and came into operation on August 14, 1953. The law in this edition is stated generally as October 1, 1953, but the last mentioned amendment was perhaps just too late for incorporation.

This edition of Woodfall will be kept up to date by annual cumulative supplements. The first supplement (which will be a permanent supplement) will be a fairly substantial one, as it will embrace the Housing Repairs and Rents Act and a new Landlord and Tenant Act. The twenty-fifth edition of Woodfall and the annual supplements are a MUST for every self-respecting property lawyer's library.

J. M. W.

A Guide to the Housing Repairs and Rents Act, 1954. (Current Law Guide No. 11.) By ASHLEY BRAMALL, B.A.(Oxon.), Barrister-at-Law. London: Sweet & Maxwell, Ltd., and Stevens & Sons, Ltd. Second Edition. xii and 180 pp. (Price 8s. 6d.)

Shaw's Guide to the Increase of Rent. By QUENTIN EDWARDS, Barrister-at-Law. London: Shaw & Sons, Ltd. xiii and 182 pp. (Price 10s. 6d.)

Mr. Ashley Bramall's useful and well-produced Guide has already run to a second edition—the first edition was published on August 11 and the second edition before the middle of September. In view of the fact that the Housing Repairs and Rents Act received the Royal Assent on July 30 and came into effect on August 30, both the author and the publishers are to be congratulated on their good service to lawyers and others concerned with this measure.

Mr. Bramall has taken the opportunity in the second edition of correcting a few minor errors in the first edition, and there is little or nothing left to criticise. He has suggested on p. 80 a form which he is not alone in thinking may be more in accordance with the intentions of the Act than the prescribed

form in a case where a landlord has served a notice under section 30 (3) in regard to internal decorative repairs. It would have been helpful if he had been able to find space to explain in the text how his view differs from the Ministry's in this respect. Briefly the Ministry regards "the stopper" (s. 24) as applying to the repairs increase before the one-third mentioned in section 30 (3) is deducted, whereas Mr. Bramall and others regard it as applying to the increase after the one-third has been deducted. The words "apart from this subsection" in section 24 (2) favour the latter construction.

Mr. Bramall brings out clearly the important difference between the new repairs increase and the permitted increases under the Rent Restrictions Acts—the former is recoverable notwithstanding the continuance of a contractual tenancy. It can thus be claimed during the subsistence of a lease for a fixed term and, in the case of a periodic contractual tenancy, can be recovered without converting the latter into a statutory tenancy.

The Guide contains, in addition to Mr. Bramall's clear and workmanlike exposition, the text of the Act and the Regulations, a table of dates and periods of notice, as well as the usual tables of statutes and cases. The whole constitutes a production which should prove most helpful to all those who have to understand and apply the Act, and is extremely good value for 8s. 6d.

Shaw's *Guide* deals with the Housing Repairs and Rents Act, 1954, only so far as the subject of increases of rent is concerned. It also deals, however, with pre-1954 increases of rent—the permitted increases under the Rent Restrictions Acts—and covers the modifications of the law relating to such increases made by the 1954 Act. The book is unavoidably somewhat sketchy in regard to the background of the Rent Restrictions Acts but is useful within its limited field. A valuable feature of the book is the forms given in the Appendices. These forms include a number which are not prescribed by the relevant regulations but which will be helpful to those who have to operate the machinery of the 1954 Act and the earlier Rent Acts. The author's view (p. 40) that the repairs increase may be demanded from tenants of dwelling-houses whose standard rent has been fixed by a Rent Tribunal is arguable but perhaps doubtful.

J. M. W.

Bateman's Law of Auctions. Eleventh Edition. By David Napley, Solicitor. London: The Estates Gazette, Ltd. lxxix, 458 and (index) 133 pp. (52s. 6d.).

We regret to say that this edition is wholly unsatisfactory. By keeping one eye on the auctioneers and one on the lawyers, the editor has produced a book unsuitable for both. There is a mass of irrelevant material; merely because an auctioneer is an agent there is no need to treat of the law of agents of necessity; nor would one expect to find the law relating to invitees, licensees and trespassers dealt with. There is a considerable amount of detail relating to the practice of conveyancing, which appears to us to be largely wasted effort. Few practising solicitors would turn to a book on auctions for such a subject and much of what is written has nothing whatever to do with auctioneers. There is far too much obsolete law: references to the Conveyancing Act, 1881, and the Agricultural Holdings Act, 1923, are inexcusable; and few solicitors have clients with leases for lives and advowsons for sale. We doubt whether "Exchequer bills are most frequently chosen" for the investment of a deposit pending completion or whether "Enfranchised copyholds must be so described." It is misleading to say that in the case of registered land "it is desirable to draw attention to the title registered"; we do not accept that the particulars "should contain the usual outgoings, if any."

The number of printing and clerical errors is so great that, were it not for the *corrigenda* and *addenda* at the beginning, one would be excused for thinking that the proofs had not been read. In citing cases italics and roman type are used indiscriminately, as are round and square brackets, *e.g.*, " (1918), App.Cas. 605." We offer no prizes for "L.R.T.H.L. 869" as a reference and, with a little thought, "R.S.Co. 65 and 27 (20) *Marks* v. *Board and Ors.*" may be decoded as "R.S.C., O. 65, r. 27 (20); *Marks* v. *Board and Ors.*" but these are by no means isolated examples.

It seems to us that unless Bateman can be thoroughly pruned, revised and brought up to date, it has outlived its usefulness.

E. F. G.

The Law of Allotments. By J. F. Garner, ll.m. Shaw & Sons, Ltd. xxii and 142 pp. (15s.).

As the author states in his preface, "The intention . . . is to state . . . the law of allotments, for the benefit of local authorities, particularly the parishes, and their officers and also for the secretaries and advisers of local allotments societies and associations. . . ." It will, however, be of considerable help to any practising lawyer who has to advise on matters connected with allotments. Unless he is retained by some allotment society, he is unlikely to have more than a hazy idea of the unattractive legislation on the subject untidily contained in about seven Acts dating from 1908 to 1950. When Mr. Garner tells the reader that there were one and three-quarter million allotments in 1944, and over a million even in 1948, one realises that the allotment is of considerable importance directly or indirectly to everyone in this country. Furthermore, there are other types of allotment apart from the urban allotment of not more than forty poles in extent, such as the cottage allotment, which includes a parcel of land, whether attached to a cottage or not, of not more than two acres—the sort of holding which may also be an agricultural holding under the Agricultural Holdings Act, 1948, or be subject to the Rent Acts. This book should certainly help the practitioner in that sort of legal nightmare. It is written clearly, concisely and to an ordered plan. The only general criticism is that the relevant Acts, as still extant, are not printed in an Appendix, as this would help both layman and lawyer. Minor carpings could be made where the author treats of common law matters, such as the important practical question of trespass on allotments: he quotes a county court decision on p. 61, which seems inconsistent with authority.

Also, should not references in text or notes on pp. 76 and 97 to the Agricultural Holdings Act, 1923, now be references to the Agricultural Holdings Act, 1948?

Apart from such minor points, the book may be warmly recommended as a guide on this difficult subject.

J. F. M.

We have also received:—

The Law of Stamp Duties. By J. G. Monroe, b.a., Barrister-at-Law. London: Sweet & Maxwell, Ltd. xx and 153 and (index) 27 pp. (25s. net.) This book consists of the articles by Mr. Monroe published in the *Conveyancer* with appendices containing a table of duties, extra-statutory concessions and transfers liable to the fixed duty of 10s. When Mr. Monroe was asked to write the articles it was felt that practitioners would welcome a work treating the subject in narrative form as a coherent whole, rather than following the normal method of annotating the table of duties. The problem with which one is so often faced is selecting the appropriate head and which the latter

method does not enable one easily to resolve. Whether Mr. Monroe has succeeded in his aim readers will already have decided for themselves, but we know that many readers are grateful to him.

The Principles of Modern Company Law. By Professor L. C. B. Gower, LL.M., Solicitor. London: Stevens & Sons, Ltd. xl and 574 and (index) 25 pp. (£2 5s. net.) In considering some particular compartment of law it is all too easy to forget that the compartment is part of a coach and the coach a part of the train. Professor Gower is fully aware of the existence of the train and the result is a lively and original work. Although, no doubt, written mainly for the advanced student, the practitioner will find a great deal that is of considerable use to him. For example, income tax and death duties are dealt with; shares of no par value are considered; and the defects of minority protection exposed.

An Estate Duty Notebook. By G. Boughen Graham, LL.B., Barrister-at-Law. London: The Solicitors' Law Stationery Society, Ltd. xvi and 123 and (index) 11 pp. (17s. 6d. net.) This book is intended as a notebook for the practitioner. It is up to date and deals with the provisions of the Finance Act, 1954. The author has deliberately omitted to deal with foreign property and shares in controlled companies, on the ground that small and medium-sized estates rarely comprise such assets, but we suggest he is quite wrong on this: a small holding of gold or copper shares is frequently found in quite small estates. Occasionally, as when dealing with goodwill and unquoted shares, the author fails to give any useful guidance, which, even in a "notebook," one is entitled to expect, but there is no doubt that Mr. Boughen Graham has succeeded in producing a useful little notebook which should prove very popular.

Current Legal Problems, 1954. Edited by Professor G. W. Keeton, M.A., LL.D., and G. Schwarzenberger, PH.D., DR.JUR. London: Stevens & Sons, Ltd. 236 pp. (32s. 6d. net.) In the 1953 volume of this series there was a good deal of special interest to conveyancers, but this year, apart from Mr. Valentine Latham's lecture on "Trustee Investments and American Practice," conveyancing topics are left severely alone. There are two lectures of considerable interest to practitioners generally, Professor R. C. FitzGerald's "The Role of the Solicitor in Modern Society" and Mr. D. Lloyd's "The Cost of Litigation." Professor FitzGerald thinks that solicitors should specialise more, but is not one of the troubles with specialisation that the client often gets biased advice and, if we all specialise, who is to guide the client to the right specialist? It is often found that the most complicated points arise in matters that do not justify the expense of specialists. These volumes are rather like lucky dips: you never know quite what you are going to get, but you are sure you will be pleasantly surprised—and you are.

Dayes' Handy Book of Solicitors' Costs. Ninth Edition. By T. O. Carr. Sweet & Maxwell, Ltd. 341 and xiv pp. (£2 2s.). Nearly half of this book is taken up with scale costs, fees and stamp duties. In addition to the usual tables of solicitors' costs, building societies' scale, Land Registry fees and stamp duty, there are tables of estate agents' commission and valuers' fees, which should prove extremely useful. The size of the book precludes detailed notes relating to conveyancing matters and sometimes the notes are so terse as to be obscure. On p. 171 the note with regard to a mortgage to secure a bank overdraft is missing; the point is that the scale does not apply to such a mortgage. In the earlier part of the book dealing with litigation there are, perhaps inevitably, a number of anachronisms.